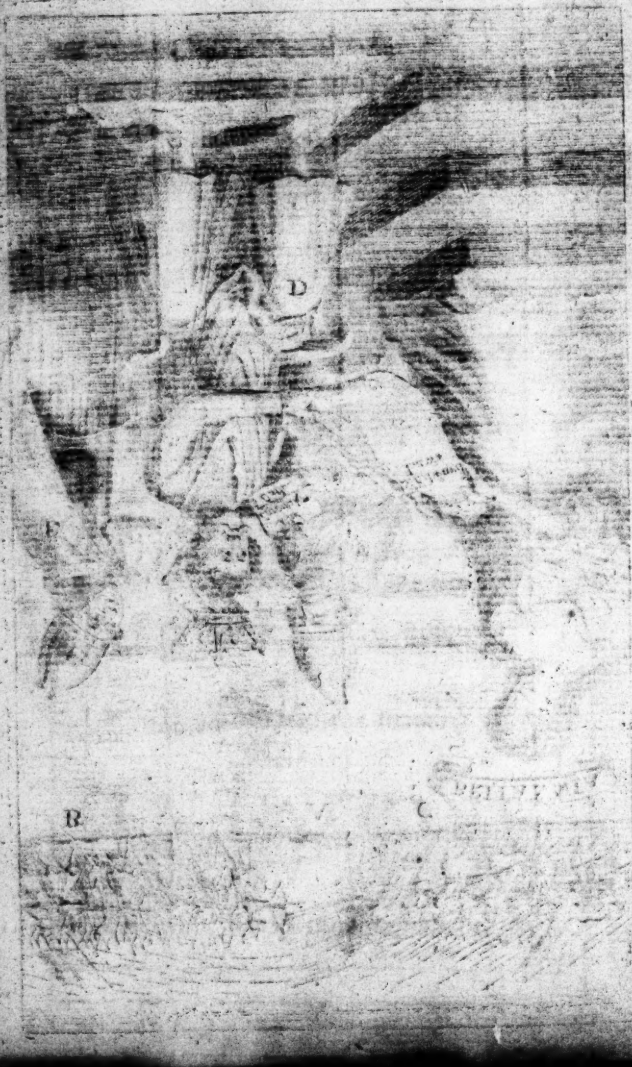
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The Fundamental Laws
S. Edward Laws
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Argumentum Anti-Normannicum:

OR AN R. II. 68.

ARGUMENT

PROVING,

From Ancient Histories and Records,

THAT

William, Duke of Normandy,

Made **no absolute Conquest** of **England** by the **Sword**; in the sense of our Modern Writers.

Being an Answer to these four Questions; *VIZ.*

I. *Whether* William the First *made an* Absolute Conquest *of this Nation at his* first Entrance?

II. *Whether he* cancelled *and* abolished *all the Confessor's* Laws?

III. *Whether He* divided *all our* Estates *and* Fortunes *between* himself *and his* Nobles?

IV. *Whether it be not a grand Error to affirm, That there were* no English-men *in the* Common Council *of the* whole Kingdom?

London, Printed by *J. D.* for *Mat. Keinton*, *Jonath. Robinson*, *Sam. Sprint.* 1682.

2170:12

An Explanation of the Frontiſpiece, warranted by the Authorities cited in the following Argument.

NO ſooner had the * *Valiant HAROLD* conquered the Daniſh King, and his *own Brother*, the daring *TOSTA*, but news was brought him, † That the NORMAN Duke was arrived at *Pemſey* in *Suſſex*; whereupon, with haſte he went to meet him, and at * *Haſtings* gave the NORMAN battel, which proved fatal to him.

* *King* Harold victorious over the K. of Denmark & Toſta, Harold's *Brother at* York.

†William *D. of* Normandy, *at the ſame time, lands in* Suſſex

*Harold *meets him at* Haſtings, *where they fight.*

For he was, as you may ſee, * ſlain, between the NORMAN *Long-Bows*, and ENGLISH *Spears*, leaving the *Duke* VICTOR in the Field.

*Haroid *ſlain.*

WILLIAM, proud with this Succeſs, marches with all ſpeed up to *Berkhamſtead*, near *LONDON*.

The D. comes up to London.

The *Reſt* of the ENGLISH (if they had look'd upon his coming, as a Deſign to conquer the Nation, and not to aſſert his pretended legal Title againſt *HAROLD*,) were then able

to have driven him back to his own Country, or at least found him a Tumulary in this, (for there was not a fifth part of the Strength of the Nation that felt the Force of his Arms) but Duke *WILLIAM* and the ENGLISH soon came to an Agreement, and the latter entred into solemn Compact to make him King.

Enters into Compact with the English, to make him King.

Thereupon *BRITANNIA* holds forth to him the Scepter with *one* Hand, And

Britan. *gives him the Scepter.*

With the *other* shews him the excellent and most famous Laws of St. *EDWARD.*

And St. Edward's *Laws to keep.*

As also, at the same Time, a *Noble* Prelat tenders him the Coronation-Oath; The ENGLISH first being asked, by the Bishop, If they would assent to have the Duke their KING? and if he should then be crowned? To which they all, with an unanimous consent, answered, Yea, Yea; Whereupon he takes the Coronation-Oath; the sence of which take as follows.

A Bishop tenders the Coronation Oath.

The Oath VVilliam *took at his Coronation.*

This Scepter, (*Fairest Queen*) I most thankfully receive, and with it do solemnly Promise and Swear, to gover

Sacramentum Willielmi Senioris. Ante Altare S. Petri Apo-

vern both **Church** and **State** in **Peace.**

Apoſtoli coram Clero & Populo jurejurando; Promiſit ſe velle Sanctas Dei Eccleſias ac Rectores earum defendere, necnon & cunctum Populum, ſibi ſubjectum juſtè, ac Regali providentia regere, rectam Legem Statuere & tenere, rapinas injuſtaq; judicia penitus interdicere. *Hoveden* pars Prior. *fol.* 258. l. 14.

Exacto prius coram omni Populo jurejurando, quod ſe modeſtè erga ſubjectos ageret, & æquo Jure *Anglos*, quo *Francos*, tractaret. *Malmsb.* lib. 3. *fol.* 154. b. l. 8.

Rex pro bono pacis, juravit ſuper omnes Reliquias Eccleſiæ Sancti Albani, Tactiſq; Sacroſanctis Evangeliis, bonas & approbatas Antiquas Regni Leges, quas Sancti ac pii Angliæ Reges ejus Anteceſſores, & Maximè Rex Edwardus Statuit, inviolabiliter obſervare. *Mat. Paris.* Vitæ Viginti trium Sancti Albani Abbatuum. *fol.* 48. l. 37.

And I vow to **Rule** my **Subjects** with that **Juſtice** and **prudent Care,** as becomes a **good King.**

I will (*with the Advice and Conſent of my Great Council*) enact **right Law:** Which done, * be *Witneſs all ye Saints,* that to the **utmoſt** of my **Power,** I will my ſelf **religiouſly keep** and **obſerve** it.

* *The Invocation.*

For what can be more **vain** and **inconſiſtent** with the **common Reaſon** of all **Mankind,** than for a **Prince** publickly and **ſolemnly** to **vvain** a **Law,** and the next moment after to **break** and **abrogate** it in his **Cloſet?**

All Rapines I will forbid, and all falſe Judgments; no **illegal** or ARBI-

TRARY ACTS, under pretence of the Prerogative-Royal, will I ſuffer or permit to the oppreſsion of my ENGLISH Subjects, between whom, and my Normans, I will adminiſter EQUAL RIGHT.

And that *God*, *Angels*, my NORMANS, and You, (O *Sacred* Queen) may all be Witneſſes and Parties to the ſincerity of my Heart, That I will not take the *Engliſh-men's* Inheritances by Injuſtice, or thruſt them out of their Paternal Poſſeſsions by wrong; That I have not, nor will pretend to any Abſolute, or Deſpotical Power over their Lives, Liberties, and Eſtates; nor violate, break, or alter, the Fundamental Rights of the Kingdom (as Tyrants do, who only deſign to enſlave their People). I do here ſolemnly promiſe and ſwear, in the preſence of all Ye mighty Powers, inviolably to obſerve and keep the Sacred Laws of St. Edward my Kinſman.

Which ſaid, the Arch-biſhop of York ſets the Imperial Crown upon *WILLIAM*'s Head; and thus of a Duke of *NORMANDY*, he was created KING of *ENGLAND*.

To

TO MY
Worthy FRIEND,
The Learned Author of
Argumentum Anti-Normannicum.

GReat Britain! *fairest Queen of all the Isles,*
Inrich'd at Home with bounteous Natures smiles!
Thou such a self-sufficiency dost own,
All Countries need thy Stores, but thou want'st none;
Divided from the World, Thou to thy self art one.
The Sea, and Continent, proclaim Thee Great,
Proud Monarchs have lain Captives at thy Feet:
The Scales of th' Western World are in thy Hand;
Each Kingdom's Fate depends on thy Command.
Where e're thy Friendship, and thy Force combine,
Against that State in vain the Rest design.
To Thee no Ills from Forreign Foes can come,
The baseſt and more dangerous are at Home.
No Desert Beasts of Prey thy Land does bear,
But yet worse Beasts within thy Bowels are,
Who would thy Rights and Ancient Glories tear.

Those

These having lost their Liberty of Mind,
Crown vanquish'd Slaves a weak excuse would find.
Are these thy Sons? Or Marks of thy disgrace?
Who own themselves a slavish conquer'd Race?
The Norman Duke on Terms receiv'd the Crown,
Swore, He'd by Edward's Laws support his Throne,
Which sure no absolute Victor would have done.
That Title which his Great Successor hath,
Came from the Pact, not from the Breach of Faith.
That gives the Bounds to all incroaching Might,
And sets the Banks about the Subjects Right:
Who pulls them down, lets in a raging Sea,
Which drowns, and swallows up all Property.
Who e're attempt to let that Torrent in,
At their own Houses may the Waste begin;
Let them for others Till their proper Land;
Or under some base Favourites Command,
May they, whilst others riot with their Stores,
Without Relief beg at their Native Doors.
Under their Countries Curse, their Tyrant's Scorn,
May they with never-ceasing Pangs be torn,
Who violate the Sacred Trust to which they're born.
But blest be Thou, and all, who dare, like Thee,
Bravely assert their Countries Liberty.
Our well-built Freedom thou dost make to appear,
And its Foundation from Time's Rubbish clear.
The Norman swore to Laws by which we're free,
Laws were more his, than our Security.

Him

Him King *the People's* joint Conſent *alone*
Did make, which by that Sacred Oath *he won:*
Or that ſame joint Conſent *had made him none.*
We were no Norman Slaves; nor French could be,
Had we enough True Engliſhmen like Thee.

But now, my Muſe, before you end, take care
Humbly to cloſe up all with Heav'n in Prayer;
Prayer for that King, who doth Great Britain *Rule,*
Who of this Iſle is th' Univerſal Soul:
In whom ſo many glorious Vertues ſhine,
As make him ſeem to be of Race Divine.

May Heav'n continually His Guardian prove,
And keep Him ſafe in all His Subjects Love!
Long may unruffled Peace adorn His Crown;
May all the Laws in their ſmooth Channel run;
And flowing Juſtice ſtill ſupport His Throne.
Thus bleſt, and thus united here at Home,
What cannot Britain's *Monarch overcome?*
Oh may Great Edward's, *and Fifth* Henry's *Soul,*
By Heav'nly Pow'r be transfus'd to him whole!
May He ride Mighty Admiral of the Seas,
Scourging His ſtubborn Enemies into Peace;
His Envying Neighbours all their Powers diſown,
Strike to His Flag, and tremble at His Frown;
And th' humbled World be glad to pay him fear,
And awful veneration every where.
That this may be, ——

May

To my Worthy Friend, &c.

May the Illustrious Senate of the Land,
With their Wise Councils, ever by him stand;
He pleas'd in them, and they resolv'd to show,
What th' utmost stretch of Loyalty can do.
Then will his Glories shine in brightest state,
At th' Head of such a joint Triumvirate:
Then King and People doubly will be blest,
And Europe *then enjoy a lasting Rest.*
For this let all our Vows to Heav'n be sent,
To see Great Charles *happy in's* Parliament.

Argu=

Argumentum Anti-Normannicum.

SIR,

YOu were pleaſed, ſome time ſince, (in my happineſs of a ſhort, but free converſation with you) to tell me, You had a mind to read how far I could give you ſatisfaction in a *few Points* you had raiſed to your ſelf, concerning the Norman Conquest; and that within a little while I ſhould have a *Paper* from you wherein they ſhould be contained: You were not long, Sir, in juſtly acquitting your ſelf of your promiſe to me; I did receive the *Furniture* of theſe enſuing *Arguments*, by the *four Queſtions* you ſent me, and hope there is nothing to be found in them, but unbyaſſed and venerable

Truth, which ſurely none will be offended to hear. I have endeavoured to pay all poſſible Reſpect to You, and to Juſtice; and, as far as my Abilities could reach, in ſo ſmall a Treatiſe, have impartially offered my Thoughts upon them, and now beg your candour in judging me.

Your Queſtions, Sir, are theſe.

The Firſt Queſtion.

I. *Whether* William, *Duke of* Normandy, (*who was afterwards* William *the Firſt*) *got the* **Imperial Crown** *of* England *by the Sword, and made an* **abſolute Conqueſt** *of the Nation at his firſt Entrance?*

The Second Queſtion.

II. *Whether this firſt* William *did* **abolish** *all the* **Engliſh Laws**, *and changed the whole Frame and Conſtitution of the Government?*

The Third Question.

III. *Whether it be true, That the* **English** *had neither Estates nor Fortunes left, but all was divided between the* **King** *and his* Normans ?

The Fourth Question.

IV. *Whether it be not a grand Error to affirm, That there were no* **English** *Men in the* **Common Council** *of the whole Kingdom ?*

I shall take them, Sir, in the order you have sent them to me ; and so first begin with your first Question.

The First Question.

Whether William, *Duke of* Normandy, *(who was afterwards* William *the First) got the* **Imperial Crown** *of* England *by the Sword, and made an* * **Absolute Conquest** *of the Nation at his first entrance?*

* For *England* thus much I dare speak, and under the rule of Modesty protest, That sithence the *Universal Conqueſt* of *William*, who first commanded and imposed Tribute upon this Land, (for Conquerors may command) Tribute and Subsidie have been as justly, both by the Law of God, and the Law of Nations, paid in *England*, as in *Jewry*; yea, and justly continued, as a remembrance of a *Conqueſt*. Dr. *Fulbec* Pandects of the Law of Nations, *c.* 10. *p.* 69. One *Blackwood* wrote a Book, which concluded, That *we* are all *Slaves* by reason of the *Conqueſt*. *Vid.* Mr. *Petyt.* Misc. Parl. *p.* 66. And this Position is maintained by an *Anonimus Author*, in his *full* and *clear* Answer to Mr. *Petyt*'s Ancient Right of the *Commons* of *England* asserted. *Pag.* 35. in the Margin.

AS you have stated the Question, Sir, and desire to know what is my Opinion of it; with submission to others, better informed, and who are more able to maintain the Truth of those Principles I proceed upon, than my self, I shall return you this modest Answer, as my Sence and Judgment in the Point, *viz.* That I cannot conclude

clude in the Affirmative, for these several constraining Reasons.

1. That *William* laid a far greater stress upon his Claim and Titles to this Kingdom, than ever he did upon his great and mighty Conquest, will be very plain and evident, if you please but to consider with me these following Particulars.

1. In that before his Conquest, when the *People* had chosen *Harold*, the Son of Earl *Godwin* for their King, after the Death of *Edward* the Confessor, and had put aside *Edgar Atheling*, by right of Blood and Inheritance entitled to the Crown: This Norman Duke made his loud Complaints of the Injuries done him, in not electing him, for he was * Cosen German to the Confessor, who died † without Issue; and therefore pretended that the Right truly devolved upon him. But, it seems, as ill luck would have it, this Duke they knew to

* Edward *the Confessor was Son to* Egelred *K. of* England *by* Emma, *Sister to* Rich. 2. *Duke of* Normandy, *who was Grandfather to Duke* William; *so that K.* Edward *and Duke* William *were Cosen Germans once removed, as this farther shews you.*

Richard 1.

Richard 2. — Emma.

Robert. — Edward.

William.

† Edward *married* Edith, *the Daughter of* E. Godwin; *but whether upon a vow of Chastity, or upon impotency of Nature, or upon any hatred to her Father, or Suspicion against her self (for all these Causes are alledged by several Writers of those Times) he forbore all private Familiarities with her.*

be a Baſtard, and neither the Saxon Law, nor the Norman Cuſtom, could help him in ſuch a Caſe, and ſo that Title did him but little good. Well, what therefore was to be his next Work? Why,

Mat. Paris. 1. *Antiq. Brit. Eccleſ.* 96.

2. Truly his Pretence was then, That the Confeſſor had deſigned him for his Succeſſor, and by his laſt Will had bequeathed this Kingdom to him; And this was confirmed by the conſent of the Nobility, and principally of *Harold* himſelf: and hereupon conſidering how *Harold* had trickt him, and ſet the Crown on his own Head, he ſends over ſeveral Ambaſſadors, with Commiſſion to require him to remember the Oath he had formerly made to the ſaid *William* in the time of his Extremity, when he was his Priſoner in *Normandy*; Which was, That he, the ſaid *Harold*, ſhould aſſiſt him in the obtaining of the Crown of *England*, if ever *Edward* died without Iſſue.

Wil. Malmesb. *lib.* 3. *fol.* 56. *l.* 2, 3.

3. And receiving but unkind Returns from *Harold*, by way of Anſwer to his Demands, which thus the Hiſtorian relates, *De Regno addebat præſumptuoſum fuiſſe, quòd abſque Generali Senatus & Populi conventu & Edicto, alienam*

alienam illi hæreditatem juraverit; 'That 'as for him to take an Oath to deliver 'up the Inheritance of any Realm, with-'out the general conſent and 'allowance * of the Senate 'and People, could not but 'be a great piece of pre-'ſumption, yea, altho' he 'might have juſt title ſo to 'do; † wherefore it was an 'unreaſonable Requeſt of 'the Duke now to require 'him to renounce the King-'dom, in which he was ſo well ſetled 'to the good liking and content of 'his People. This Norman Duke, not to be his own Judg, refers himſelf to the Pope (then *Alexander* the ſecond) to decide the Matter, and ſo reſolved that the infallible Chair ſhould determine who had the Juſteſt Title to the Crown and Kingdom, *Harold* or Himſelf. And the good old Gentleman (who would not be behind-hand with him in civility for ſo great a kindneſs, as was the Appealing to him, and ſo flattering him with a Judicatory Power over Princes) eaſily was induced to pronounce ſentence on *William*'s behalf.

* *That is, without the aſſent of the Wittenagemot, Mycel Synod, or Parliament.*

† Præterea iniquum poſtulat, ut imperio decedat, quod tanto favore civium regendum ſuſceperit. *Malmsb.* l. 3. f. 56. l. 30.

But all these blustering Pretences of nearness in Blood, (which it seems his Son *Henry* thought to be the best flower in his Garland, when he * calls himself the Son of *William the Great*, (pray, Sir, be pleased to observe, it is not of *William the Conqueror*) *Qui* Edwardo *Regi Hæreditario Jure successit in Regnum*, Who succeeded to King *Edward* in the Kingdom, by Right of Inheritance) or the Confessor's bequest of the Crown to him. Or lastly, the Pope's definitive Sentence in *William*'s favour. All these blustering Pretences of his, I say, availed but little with *Harold*; and therefore you must think, it could not but incense the Duke of *Normandy* very greatly, so that he had now a just cause of open quarrel against *Harold*, for the Reasons you have heard: And thereupon *convening his Parliament, or Assembly of three Estates, which consisted of the Clergie, Nobility, and Commons; the Nobility, in fine, promised to serve him, and the Clergie and People to aid him with Mony, according to*

* *In his Charter, whereby he advanced the Abby of Ely into the degree of a Bishoprick.*

Seldeni ad Eadmerum & Notæ & Spicileg. *fol.* 211. *lin.* 39.

Nobility is taken in France *for Gentlemen, as well as for Earls, or persons of like dignity.*

Verstegan's *restitution of decayed Intelligence in Antiquities, dedicated to King* James. *pag.* 173.

to their ſeveral Abilities, and ſuch offers as they made, were forthwith ſet down in writing by a Secretary there preſent. So that being thus ſupplied, and aſſiſted with ſeveral other of his Friends, he makes for *England*; and was no ſooner arrived at a place in *Suſſex*, called *Pevenesſey*, (now *Pemſey*) and got well on Land, but, by his Proclamation, he declared upon what Occaſions he thus entred the Realm; and ſo preparing to give *Harold* Battle, he hereby ſeemed as if he would have all the World to know, his Quarrel was more Perſonal than National. But this I will ſpeak more particularly and largely to, when I come to mention ſome of the Charters he made after he was eſtabliſhed King.

And as Perjury ſeldom or never eſcapes unpuniſhed; ſo here was a viſible Inſtance of the Divine Juſtice upon *Harold* for his breach of Oath and Covenant to the Duke; for in the Battle of *Haſtings* he met with his Reward, loſing both his Crown and his Life at once, and leaving *William* to finiſh the day with Victory, over thoſe that were yet reſolved to diſpute the Cauſe with him.

And

And now being rid of his ſtubborn Enemy, and in the heat of the Chaſe got to *London*, he poſſeſſed himſelf of that Kingdom which he pretended was his own by Right before from the Titles we have already mentioned. Yet however it was in no ſuch haughty and inſulting way, as many boaſt of, and would gladly have their unwary Readers to believe, upon their bare Credit and Teſtimony; but he choſe the more grateful and complying Artifices of a Courtier, and ſetled himſelf in it by a kind of mutual Agreement, and expreſs compact, as now I hope will be clearly demonſtrated by what I ſhall offer to you after this his (pretended abſolute) Conqueſt. For,

1. Tho' he was victorious over his great Adverſary *Harold*, yet if he had been an abſolute Conqueror, (as hath been of late ſo vigorouſly aſſerted by our Modern Writers) what urgent neceſſity was there for him, or how did it ſtand him in ſuch mighty ſtead, ſtill to keep himſelf armed with the aforeſaid Titles, that ſo he might have the more colourable pretence of Right and Juſtice on his ſide, in laying a legal Claim to this Imperial Crown? For, me-

me-thinks, if he had a full poſſeſſion upon ſuch a forcible entry, as is pretended, this had been a ſtronger Title than any thing elſe he could have alledged: for how could, or durſt, a vanquiſhed, enſlaved Nation, diſpute with him, when he rode triumphing on their Backs, and had laſhed them into an entire ſubmiſſion of vaſſalage? But,

2. Let us ſee the manner of this firſt King *William*'s Coronation; and whether or no he did not take an Oath at the ſame time, which was, in ſence and ſubſtance (if not juſt in the words themſelves) the very ſame with that which the Ancient Saxon Kings uſed likewiſe to take upon their Coronations. And for your full ſatiſfaction herein, I ſhall give you the parallel of them both together, and begin firſt with

The Oath of either King *Edward*, or King *Ethelred*, (for *Dunſtan* crowned both of them at *Kingſton*) about the Year 970.

In vita Ælfredi Magni, fol. 62.

[Promiſſio Regis vel *Edvardi* vel *Æthelredi*, (utrum-

[que enim *Dunſtanus Kingſtonia* Coronavit) circa Ann. 970.]

This

Hoc Scripto, de litera ad literam, deſcriptum eſt ad ſcriptum illud, quod *Dunſtanus* Archiepiſcopus tradebat Domino noſtro *Kingſtoniæ*, ipſo illo die quo Conſecratus erat in Regem; atq; illi interdicebat ne ullam ſponſionem daret præter ſponſionem illam, quam depoſuerat in Altari Chriſti, quemadmodum Epiſcopus illi dictaret.

This writing, punctually to a Letter, correſponds with that Writing which *Dunſtan* the Arch-biſhop delivered to our Lord the King at *Kingſton*, that very day of his Coronation; and did then forbid the King, that thenceforth he ſhould make any other Oath, than that which he had made at the Holy Altar, or what the Biſhop ſhould dictate then unto him.

In Nomine S. Trinitatis, Ego tria promitto Populo Chriſtiano, meiſq; ſubditis.

In the Name of the Holy Trinity, I do promiſe three things to Chriſtian People, and my Subjects.

The Oath of the Saxon Kings at their Coronation.	The Oath which *William* the Firſt took at his Coronation.
1. Dei Eccleſiam, ac Univerſum mei Imperii Populum Chriſtianum vera pace fruiturum.	1. 'That I will 'peaceably govern 'the Church of 'God, and the Peo- 'ple of my King- 'dom.	1. *That he would defend the Churches of God, and all their Paſtors.*
		2. 'That

K. *William's* Oath.

2. *That he would govern all People that were his Subjects with Justice, and with that prudent care which became a good King.*

3. *That he would both enact, and himself keep, right Law, and to the utmost of his Power, would interdict all Rapines, and false Judgments.*

4. And he added one Article more to the Oath, than was in that of the Saxon Kings; and it was extraordinarily necessary to be done, *rebus sic stantibus*, and that was, *Quod æquo jure Anglos & Francos Tractaret,*

Saxon Kings Oath.

2. 'That I will 'utterly interdict 'Rapines, and all 'Injustice to all 'Orders of Men.

2. Me Rapinam, omnemq; iniquitatem, omnibus ordinibus interdicturum.

3. 'That I do 'promise, and will 'command, That 'in all Judgments, 'Justice and Mercy shall be mingled together, to 'the end, that God, 'who is the Omnipotent Judg of 'the World, and 'ruleth over all, 'may be pleased, 'out of his infinite 'Compassion, to be 'propitiously good 'and merciful to us 'all.

3. Me promissurum & mandaturum in omnibus Judiciis, Justitiam & Misericordiam; ut nobis omnibus, pro infinita sua miseratione, propitius sit, Clemens ac Misericors Deus, qui vivit & regnat, &c.

That

Saxon Kings Oath.

Christianus Rex, qui hæc observaverit, sibi proveniet honorem mundanum; quinetiam illi Deus æternus miserebitur tam in hac vita presenti, quam in Æterna illa, quæ nunquam defick.

'That Christian 'King who shall 'observe these 'things, shall de'servedly acquire 'all earthly Ho'nour; moreover 'the everlasting 'Lord God shall 'take Compassion 'on him, as well 'in this Life, as that 'which is Eternal 'and Endless.

K. *William's* Oath.

ret, That he would govern both the English and French by the same equality of Law without respect to either.

This Oath too he took at the Altar of St. *Peter*, before ever he was Consecrated, and the *Clergie* and *Laity* were equally Parties and Witnesses: After which he was Anointed and Crowned by *Aldred* Archbishop of *York*; for *Stigand* the Arch-bishop of *Canterbury*, was not admitted to that Office, because of some defect in his Investiture.

But

'But if he shall do contrary to what he promised 'God, thenceforth he shall 'daily decline, and his Subjects shall fail in their Allegiance, and every thing 'will be turned from bad 'nought, unless in time he reforms the 'Errors of his Ways.

Ac si irritum fecerit quod Deo erat promissum, tum demens egregiè verget in pejus, mox quidem in populo suo; & omne demum quicquid sit, convertetur in pessimum.

to stark

'Meditate often with 'thy self, that thou shalt 'one day bring thy whole 'Flock before the Tribunal 'of God, whose Shepherd 'thou art here ordained, 'and therefore often consider with thy self, and look forward 'how thou hast kept those whom 'Christ with his own dear Blood, hath 'formerly redeemed.

Hoc tecum sæpe meditare, quod debeas in Dei Judicio gregem proferre & sistere, in quem Pastor in hac vita constitutus es; & prospice quomodo conservasti quod Christus Sanguine suo olim redemit.

'It is the Office of an Anointed King to judg no 'Man unrighteously; to 'protect Widdows, Orphans and Strangers; to 'interdict Robberies; to 'punish Whoredoms; to 'separate and utterly to extirpate

Regis Consecrati jus est male judicare neminem; Viduas, Orphanos & Peregrinos tueri & conservare; latrocinia prohibere; scortatores corrigere; incestuosos disjungere ac funditus extirpare; veneficas & incantatores delere; Parricidas & perjuros terris exterminare; pauperes eleemosynis sublevare.

'tirpate all inceſtuous Perſons; to a-'boliſh and cut off Witches and En-'chanters; to baniſh Parricides and 'perjured Perſons out of his Domini-'ons; to comfort the Poor with 'Almes.

Senes, Prudentes, & Sobrios ſibi in conſiliarios aſcribere.

'To call Grave, Sober, 'and wiſe Men to counſel 'and adviſe him.

Juſtos ſibi in Miniſtros conſtituere; quia quicquid ipſi injuſtum fecerint ejus (Autoritate) univerſi illius rationem tenetur ille reddere in die Judicii.

'To chuſe juſt and good 'Men for his Miniſters and 'Officers, becauſe whatſo-'ever illegal Actions they 'ſhall commit (under his 'Authority) he muſt, at the Day of 'Judgment, give an account for.

And the reaſon of all this is evident, both from the Laws of God and Man; the King is *Debitor Juſtitiæ* to all his People, to rule and govern them by Law: *Which*, as his late Majeſty ſaid, *is the Inheritance of every Subject, and the only ſecurity he can have for his Life and Eſtate.* *Ad hoc autem creatus eſt & electus*, writes *Bracton*, *ut Juſtitiam faciat Univerſis*: and that *dum facit juſtitiam Vicarius eſt Regis æterni*, *Miniſter*

Exact Collect. p. 28, 29.

Bract. *lib.* 3. *fol.* 107. a. b.

Miniſter autem Diaboli, dum declinet ad injuriam. *Henry* the Third, upon a Charter granted by his Father King *John*, and confirmed by himſelf, declares, *Qui vero id quod dictus Pater noſter eis per Chartam ſuam conceſſit, & nos poſtmodum annuimus infringere nequaquam volumus, ſicut nec de jure debemus*; much leſs a Coronation Oath. *Edward* the firſt tells the Pope, upon a Meſſage ſent him, That he could not anſwer without conſulting his Parliament; and gives this for his Reaſon, *Jurejurando in Coronatione noſtra preſtito ſumus adſtricti, quod Jura Regni noſtri ſervabimus illibata, nec aliquid, quod Diadema tangat, Regni ejuſdem abſque ipſorum requiſito conſilio faciemus.*

Rot. Claus. 9. *H.* 3. pars prima. m. 18.

Rot. Claus. 3. *E.* 1. m. 9. in Schedula.

Obſerve, laſtly, that *Edward* the Third, that famous Conqueror of two Kings, the Scottiſh and French, hath left recorded to Poſterity a definitive Sentence and Judgment in this Point, as an indiſputable rule of Right and Juſtice;

That he ought, and was bound by his Coronation Oath, to keep the Law of the Realm.

Fulton Stat. 25. *E.* 3. *f.* 150.

Cited in White's *Sacred Laws*, p. 69.

This Law of the Realm, or Land, was looked upon, in the judgment of these Parliaments, as * *the Law of Ancient Time*, † *of old Time used*, and * *the Old Law*; whose Age made it the more venerable, and gave an addition of honour to it.

* 27. E. 1.
† 25. E. 3.
* 42. E. 3.

Well, having thus shewn you the Coronation of King *William* the First, and given you the Solemn Oath he at the same time took, even before his Consecration, that so he might give all possible satisfaction to the English, of his resolving to rule accordingly; and also having made it plain, that it was the same in substance with that the Ancient Saxons took before him; I shall now descend briefly to set before you some of his own Charters, as likewise some of *William* the Second's, and of *Henry* the First's, his Children, and succeeding Kings; and from them evidence to you, I hope demonstrably, that it was not so much his Conquest he relied upon, when he was setled in this Imperial Throne, as his claim to the Crown of *England*, *Jure Hereditario*, by Right of Inheritance. And for the proof of this, be pleased

to

to accept of theſe enſuing Inſtances.

1. In Nomine Patris, & Filii, & Spiritus Sancti, Amen. Ego Willielmus Dei Gratia Rex Anglorum, *Hæreditario Jure* Factus. Carta Antiqua litera D. N. 4.

2. In Nomine Patris, & Filii, & Spiritus Sancti, Amen. Ego Willielmus Rex Anglorum *Hæreditario Jure* Factus. Carta 4. E. 4. m. 27. per Inſpex.

3. In nomine Sanctæ & individuæ Trinitatis, Ego Willielmus Dei Gratia Rex Anglorum, notum facio omnibus, tam poſteris quam præſentibus Archiepiſcopis, Epiſcopis, Abbatibus, Comitibus, Baronibus, & omnibus *fidelibus Francis & Anglis*, Quod cum in Angliam veniſſem, & in finibus Haſting cum exercitu applicuiſſem contra hoſtes meos, qui mihi Regnum Angliæ injuſtè conabatur auferre. Monaſt. Anglican. *Vol.* 1. *fol.* 317.

4. In ore gladii (*ſaith* William *the Firſt's Charter*) Regnum adeptus ſum, Anglorum devicto Haroldo Rege cum ſuis Complicibus, qui mihi Regnum cum providentia Dei deſtinatum & beneficio *conceſſionis* Domini, & *Cognati* mei glorioſi Regis *Edwardi* conceſſum conati ſunt auferre, *&c.* Carta Weſtm. per Inſpex. 1. E. 4. parte ſeptima m. 26. *Mr.* Seld. *Review*, p. 483.

Come we now to his Second Son,

William Rufus.

Carta Regis Willielmi Rufi vide Monaſt. Anglican. *Vol.* 1. *fol.* 352.

5. Willielmus Rex Anglorum, Willielmo Vicecomiti Filio Baldewini, & omnibus Baronibus ſuis & Miniſtris, qui habitant in Devoneſcira, Salutem. Notifico vobis, quod mea condonatione Eccleſia beati Olavi Regis, & Martyris à Monachis belli ædificata, in honore beati Nicholai, quam cum omni terra quæ pertinet ad Eccleſiam ſupraſcripti Martyris meo privilegio, videlicet Literis & Sigillo, liberam facio, & ita liberam & quietam per omnia cum ſaca & ſoca, & thol & theam, & infangenetheof, & warpeni, & murdro, & omnibus conſuetudinibus, & operibus & auxiliis, ſicut Pater meus liberam fecit Eccleſiam Sancti Martini de bello, *ubi hoſtem devicit*, & ubi *Coronam* Regni *hæreditariam ſibi bellando adquiſivit*. T. Walchelino Wintonienſi Epiſcopo & Rogero Bigot apud Wintoniam.

From

From **William Rufus** proceed we to his Brother,

Henry the First.

And, ſaith he,

6. In Nomine Sanctæ & Individuæ Trinitatis, Patris, & Filii, & Spiritus Sancti, Anno Incarnationis Dominicæ MCVIII Indictione ..... Anno vero Pontificatus Domini Paſchalis Papæ ſecundi ✝, Regni quqq; mei ſimiliter ✝, Ego Henricus providente divina clementia Rex Anglorum & Normannorum Dux, Willielmi Magni Regis Filius, qui Edwardo Regi *Hæreditario Jure* ſucceſſit in Regnum, *&c.* Ex Hiſt. Elienſis Eccleſ. M. S. in Bibl. Bodleana (inter Codices Cant. *l.* 58.) *lib.* 3 *fol* 2.a. Monaſt. Anglican. *Vol* 1. *fol.* 95.

7. *Again*, Ego Henricus Dei Gratia Rex Anglorum, Filius Magni Regis Willielmi, qui beatæ memoriæ Edwardo in Regnum *Succeſſit*. Monaſt. Anglican. *Vol.* 2. *fol*, 845.

8. To give you one Charter more. The words of that of *Henry* the Firſt, to the Abby of *Weſtminſter*, are, Pro memoria *Edwardi* Cognati mei, qui *Patrem* meum *liberoſq;* illius in Regnum ſuum adoptivos *hæredes* inſtituit. Ex MS. Domini Rogeri Owen Equit. Aurati.

And thus have I given you, as it were, a three-fold Cord (not eaſily to be ſnapt aſunder) to bind hard my Aſſertion, and to convince thoſe, who will not ſuffer themſelves to be over-run by an obſtinate Prejudice, or captivated by a byaſs'd Intereſt, that our firſt **William**, when he came in, gained **not** ſuch an **abſolute Victory** as is pretended, over this Nation, (for when he came in, he had not ſubdued the fifth part of it) but came to the Crown by the Election and Conſent of the Clergy and People. And, *ſædus pepigit*, he made a Solemn Covenant with the Engliſh, to obſerve and keep thoſe Laws, which were *bonæ & approbatæ, & antiquæ Leges Regni.*

And this, Sir, is what I ſhall endeavour clearly to make out to you in my Anſwer to your Second Queſtion.

The

The Second Queſtion.

Whether this firſt William *did* abolish *all the* Engliſh Laws, *and changed the whole* Frame *and* Conſtitution *of the* Government? Queſt. 2.

AND doubtleſs not; for as my Lord *Coke* ſaith, *The Grounds of our Common Laws at this day, are beyond the Memory or Regiſter of any beginning, and the ſame which the Norman Conqueror then found within this Realm of England:* And thoſe Laws he ſwore to obſerve, which were good, approved, and ancient. *Lord* Coke's *Preface to his 8th Report.* Ex vitâ Abbatis Sancti Albani.

Now, that theſe were only his *Norwegian* Laws, ſure none can, or ought to believe, after they have throughly examined theſe plain Truths, which I ſhall here offer to their fair peruſal.

1. If they pleaſe to conſider what was the Title of the Laws, called the Laws of King *William* the Firſt, publiſhed by Mr. *Selden*,

with his learned Notes upon *Eadmer*, (and ſince with the Saxon Laws).

Why, truly, the Title was plainly this; *Theſe are the Laws and Cuſtoms which* William *the King granted to the whole People of* England *after the Conqueſt of the Land. Theſe were thoſe which the King* Edward *his Couſin held before him.* In theſe Laws recited by *Hoveden*, in the Life of King *Henry* the Second, King *Edward*'s Laws are confirmed in theſe words; *This we command, That all Men have and hold the Law of* Edward *the King in all things; together with thoſe Laws which we have added for the profit of the Engliſh.*

Selden *ad Eadmerum, fol.* 173. Ce ſont les Leis & les Cuſtumes que li Reis William grantut a tut le Peuple de Engleterre, apres le Conqueſt de la Terre. Ice les meiſmes que le Reis Edward ſun Cofin tint devant luy.

So that here was no aboliſhing of the Old Saxon Laws that he found, when he came to govern this Kingdom, nor any ſetting up of new ones in their ſtead: No, ſo far was he from any ſuch Deſigns of introducing new Laws, (which muſt needs be then the abſolute Reſults of Arbitrary Will and Pleaſure, to ſhew the ſad and calamitous

tous Effects of an entire Conqueſt) to the overthrow of thoſe ſo firmly eſtabliſhed already; that, you ſee, he gives his Confirmation to King *Edward*'s Laws, which indeed, generally ſpeaking, were but a Collection of thoſe the Hiſtorian calls, *Bonas Leges ab antiquis regibus latas, non quod ille ſtatuerit, ſed quod obſervaverit*; not ſo much the Laws of his own making, as thoſe he cauſed to be ſtrictly obſerved and put in execution. Malmesb. de Geſt. Regn. Angl. *lib.* 2. *fo.* 42. *l.* 21.

From the Title of his Laws, proceed we

2. To the Confirmation it ſelf, and here I ſhall acquaint you with the manner of it, in all its neceſſary Particulars.

This *William* the Firſt, with his French and Normans, putting many hardſhips upon the Engliſh, which occaſioned great Diſorders and Convulſions in the State; ſeveral of the Saxons chief Nobility, betook themſelves to Arms for the ſake of their *Avitæ Conſuetudines*, to which they bore an immutable and an immortal Love, and which they feared ſome were endeavouring

vouring to take away and change them, though on the other hand they were obſtinately reſolved never to part from them, for they had *à Majoribus didiciſſe aut Libertatem aut Mortem*; and they would rather undergo the worſt Calamities of a more cruel War, than they would tamely quit and abandon thoſe dear Laws and Cuſtoms, to which they had ſo long been uſed, and were ſo well acquainted with.

Seld. *Tit. of Hon. fol.* 523.

The King hereupon, to keep the People in a greater obſervance of their Duty, and withal, not forgetting the Oath he had taken at his Coronation, cauſed *twelve of the moſt diſcreet and wiſe Men in every Shire throughout all* England, to take an Oath before himſelf, to deal ſincerely and uprightly, without turning either, *ad dextram, aut ſiniſtram*, that is, as my Lord *Coke* interprets it, 'neither to 'flatter Prerogative, or extend Privi-'ledg; and to declare and lay open the Conſtitutions of their Laws and Cuſtoms, without concealing, adding, or in any ſort varying from the Truth. But finding *William* and his Norman Barons, who were *Norwegians* by extraction,

Ex lib. Monaſt. de Litchfield. Co. 8. *Rep. in Pref.*

traction, were for introducing the Norwegian Laws: This the Engliſh thought a more killing blow than that of his Victory; and therefore *Univerſi Compatriotæ, qui Leges edixerant, triſtes affecti*, being all of them in a great Conſternation, they beſeeched him that they might ſtill retain *Leges proprias*, their own Laws; and enjoy *Conſuetudines Antiquas*, their Ancient Cuſtoms, in which their Fathers lived, *& ipſi in eis nati & nutriti ſunt, quia durum valde foret ſibi ſuſcipere Leges ignotas, & judicare de eis quas neſciebant*, and themſelves were born and bred up in, becauſe it would be very hard to receive Laws unknown, and to judg of thoſe things they underſtood not. And when *William* denied, they warmly reinforced their Requeſts, and then conjured him, *per Animam Regis Edwardi*, by the Soul of King *Edward*, *qui ſibi poſt diem ſuum conceſſerat Coronam & Regnum, & cujus erant Leges*, that he would not impoſe a Yoke upon them which they were not able to bear, and which would only gall their Necks, and make them the more fretting and unruly.

Apud Lambard. *fol.* 149.

Id. Ibid.

King

King *William* finding there was no Remedy, tho' he was long reſolute, at laſt, in a **Common Council** of his Kingdom, yields; and by his **Magna Charta**, (the ground-work of all thoſe that after followed) he confirmed to them their Ancient Laws, *ad præces Communitatis Anglorum.* Bleſſing it with the Seal of Security, and Wiſh of Eternity; cloſing it up with this general: And we further Command, That all Men keep, and obſerve duly the Laws of King *Edward*; rearing up the Frontiſpiece of his Gracious Work with his Glorious Stile, *Willielmus Dei Gratia Rex Anglorum, Dux Normannorum, Omnibus hominibus ſuis Francis & Anglicis, Salutem. Statuimus imprimis ſuper omnia unum Deum per totum Regnum noſtrum venerari, unam fidem Chriſti ſemper inviolatam cuſtodiri, pacem, & ſecuritatem, & concordiam, judicium & juſtitiam inter Anglos & Normannos, Francos & Britones Walliæ & Cornubiæ, Pictos & Scotos Albaniæ, ſimiliter inter ——— & Inſulanos, Provincias & Patrias quæ pertinent ad Coronam & dignitatem, defenſionem & obſervationem & honorem Regni noſtri, & inter omnes nobis Subjectos*

Apud Cl. Lambard. *fol.* 158.

Co. li. 8. *in Pref.*

Ex Libro MS. de legib. antiq.

jectos per Universam Monarchiam Regni Britanniæ firmiter & inviolabiliter observari.

Ingulphus, Secretary to *William* in *Normandy*, and afterwards made Abbot of *Crowland* by him, is an unexceptionable Witness, to prove that the English Laws were then anew confirmed; and he saith, † 'I brought this time 'with me, from *London*, (where he had been about the business of his House) 'to my Monastery, the Laws 'of the most just King *Edward*, which my Lord 'William, the renowned 'King of *England*, had pro-'claimed authentick and 'perpetual all *England* over 'to be kept, under most grievous 'Penalties, and commended to his 'Justices in the same Tongue they 'were set forth.

† *Ex* Ingulpho *Abbate* Crowlandense, *fol.* 519. b. *l.* 37.

Attuli eadem vice mecum de Londoniis in meum Monasterium Leges æquissimi Regis Edwardi, quas Dominus meus inclitus Rex Willielmus authenticas esse & perpetuas, per totum Regnum Angliæ inviolabiliter tenendas sub pœnis graviss. proclamâret, & suis Justitiariis commendâret, eodem idiomate, quo editæ sunt.

And this Proclamation was not all (to allay the Storms, which perhaps the violation of these Laws had raised); 'For the good of Peace, saith an ancient Monk, 'he swears, upon 'all the Reliques of the Church of Saint

'Saint *Albane*, touching the Holy Gospel, Abbot *Fredrick* ministring the 'Oath, * the good and approved ancient Laws of the Realm, which the 'Holy and Prous Kings of *England*, his 'Ancestors, and especially King *Edward* set forth, inviolably to keep.

* Mat. Paris *in vit.* Fretherici *Abbatis S. Albani. fol.* 48. *l.* 39. Bonas & approbatas antiquas Regni Leges, quas Sancti & Pii Angliæ Reges ejus Antecessores & maxime Rex Edwardus statuit, inviolabiliter observare.

Thus we see the Mighty Conqueror is himself conquered, and solemnly renouncing all Arbitrary Will and Power, submits his Will to be regulated and governed by Justice, and the ancient Rights of the English Men.

Besides that, the Laws that were continued and confirmed, were the old Saxon Laws, and the Additional Laws were made for the Benefit and Advantage of the English, not Normans. And those Laws of Saint *Edward*, which the English were so fond of, this *William* solemnly swore, before God, Angels, and Men, for ever inviolably to keep and observe.

But before I leave this your Second Question, Sir, I think it will be no ways improper to give you the signification

fication of the word Conquest, and in what sence Historians, and learned Antiquaries have understood it.

1. *Matthew Paris* hath it thus, *Rex Angliæ ex* Conquestu, *dicitur tamen, quod beatus Edwardus, eo quòd hærede caruit, Regnum legavit Willielmo Bastardo Duci Normannorum.* Mat. Paris. *fol.* 941.

2. Sir *Henry Spelman* in his Glossary, says, *Willielmus Primus* Conquestor *dicitur, quia Angliam conquisivit, id est, acquisivit*, purchased, *non quod subegit*, not that he subdued it. Spelm. *Gloss. tit.* Conquestus. *fol.* 145.

3. Sir *John Skene*, Clark of the Register Council, and Rolls, to King *James* in *Scotland*, in his Book, *De Verborum significatione*, tells us, That Conquestus signifies Lands *quhilk ony* Person *acquiris*, and *possessis, privato jure, vel singulari titulo, veluti donatione, vel singulari aliquo contractu.* Skene. *p.* 39.

4. And it seems to me not improbable, that the Title of *Conqueror*, rather than of *Victor*, was assumed by him, as being a word more mild, and originally signifying, as it does in *Scotland*,

Scotland, a *Purchaſer*; which is, he that cometh to a real Eſtate, not by hereditary Deſcent, but by Bargain or Gift, *&c. Conqueſtus dicitur ratione primi Conqueſtoris, & cum tranſmittitur ad ejus hæredem, exuit naturam Conqueſtus, & induit naturam Hæreditatis.*

Mr. *Skene* de Verborum ſignific. verbo Conqueſtus.

5. And that the word Conqueſtus did ſignify what the Hiſtorians ſay it did, we have Records to juſtify their Expoſition, whereof I ſhall produce one, and that is above 480 Years ago. It ſays, *Robertus Filius Nigelli petit verſus Richardum Battail Capitale Meſſuagium*, &c. *Ricardus venit & dicit quod pater*, &c. *fuit perſona Eccleſiæ de Conqueſtu ſuo*, &c. *& dedit*, &c. *Placita de terris. Mich. 2. Johan. penes Camerar. Scaccar. remanen.* Now ſurely none can make the word Conqueſtus, here, to ſignify that the Father of Battel got the Advowſon by Conqueſt, in our modern ſenſe, but that he had it by his own purchaſe.

6. Sir *Roger Twiſden*, in his Preface before King *William*'s Laws, and he well enough underſtood the full meaning of the word Conqueſtus, ſays,

ſays, *Non exiſtimo* **Willielmum primum** *de omnium Anglorum terris ad* **voluntatem** *ſuam & pro* **libitu** *in modum* **abſolutæ** *dominationis diſpoſuiſſe.* I do not in the leaſt imagine, that **William the Firſt** had the diſpoſition of the Lands of all the **Engliſh**, according to his own **Arbitrary Will** and Pleaſure, and after the manner of an **Abſolute Conqueſt**.

Apud Lambardum. *in Præfac.* 155.

Now, Sir, by theſe ſeveral Explanations of the word, I think it is very obvious to any impartial Conſiderer, that, (however we conſtrue and interpret it now, being either urged by Flattery or Intereſt ſo to do) it never did, even in that Age it ſelf, import or ſignifie ſuch an **abſolute** and **entire Conqueſt**, as to carry along with it the **enſlaving** of the whole **Engliſh** Nation, after *William*'s Victory over *Harold*. Nay, tho' every Body will acknowledg, that this *Harold* came to the **Imperial Crown** of *England* * by a general Election of the Chief of the Nation, yet there is an Ancient Author calls him **Conqueror**; And what then ſhall we think of the ſignification of the word, but that it was an Ac-

* à totius Angliæ Primatibus ad Regale Culmen electus. Abrev. Chron. Rad. de dicето. *fo.* 479.

queſt at moſt, and that too by the Voice and Suffrage of the People; ſaith he, *Heraldus ſtrenuus Dux* Conqueſtor *Angliæ*.

MS. ex Bib. Domini Wild defuncti.

But, Sir, this is not all; I muſt beg your patience and leave, for the better illuſtration of the word Conqueſt; and to diſabuſe the World in this Point, to preſent you with this following

Summary SERIES

Of the Stiles of our ſeveral deſcendant Kings, from this *William* the Firſt, incluſively, to the Great King *Edward* the Third; and therein make an Obſervation, which perhaps as yet hath ſcarcely been taken notice of.

The

The Stiles of the Kings.

1. Willielmus Rex Anglorum, &c. *and ſometimes* Willielmus Cognomento Baſtardus Rex Anglorum, &c. — *W.* 1.

2. Willielmus Rufus Rex Anglorum, &c. *and ſometimes* Willielmus Dei Gratia Rex Anglorum, &c. — *W.* 2.

3. Henricus Rex Anglorum, &c. *and ſometimes* Henricus Willielmi Magni Regis Filius. — *H.* 1.

4. Stephanus Rex Anglorum, &c. *and ſometimes* Stephanus Dei Gratia Rex Anglorum, &c. — *Steph.*

5. Henricus *omitted* Dei Gratia, *and uſed this Stile*, Henricus Rex Angliæ, &c. *and ſometimes* Henricus Filius Imperatricis Matildæ Rex Angliæ, &c. — *H.* 2.

6. Richardus Rex Angliæ, &c. — *R.* 1.

John. 7. Johannes Rex Angliæ, &c. *and added this,* Dominus Hiberniæ.

H. 3. 8. Henricus Filius Johannis Rex Angliæ, &c.

E. 1. 9. Edwardus Rex Angliæ, &c.

E. 2. 10. Edwardus Filius *Edwardi* primi, Rex Angliæ, &c.

And now we are come to the great Epocha of Time, when the Stile of our Kings altered. *Edward* the Third, in the beginning of his Reign, in ſeveral Records, writ himſelf, *Edwardus Filius Edwardi Filii Edwardi*, that is, *Edward*, the Son of *Edward* the Second, the Son of *Edward* the Firſt. But this diſtinction not being well approved of, and having conſidered, that before the Conqueſt there had been two King *Edwards*, he in all Fines, and in general Records, writ himſelf, *Edwardus Rex Angliæ*, &c. *tertius poſt Conqueſtum*, which was done in the ſecond Year of his Reign, *Anno Dom.* 1328. which Rule was followed by *Richard* 2. *Hen.* 4. *Hen.* 5. *Hen.* 6.

Hen. 6. and ſo to ſucceeding Kings downwards.

And, Sir, to give you a further proof, that King William did not Cancel and Aboliſh all the Engliſh Laws, nor change, as is ſo much affirmed, the whole Frame and Conſtitution of the Government, be pleaſed to hear the Judgment of Mr. *Selden*, and the Opinion of Sir *Winſton Churchill*; and I hope they are ſuch unqueſtionable Authorities, as may ſufficiently ballance, if not totally depreſs the fierceſt of Gain-ſayers.

I ſhall begin with the great and ever famous *Selden*, (for whoſe Memory, as truly deſerving, I have the higheſt regards) and ſhall tranſcribe his words at large, which may not only ſerve for a good Solution to this your Second Queſtion, but indeed may poſſibly fully ſatisfy you as to your other three.

His words are;

'The Laws of before, as well as of 'after the Norman Conqueſt, (as it is 'vulgarly called) are here gathered, 'and are perhaps equally obſervable, 'as the Reſt, in the conſequent of a

Selden's *Review of his Hiſtory of Tithes*. p. 432, 483, 484.

'*general conſecration of Tithes* to the 'Church in *England*. For neither 'were the Laws formerly made, abo-'liſh'd by that Conqueſt, altho' by 'Law of [*i*] War, regularly all Rights 'and Laws of the Place conquered, be 'wholly ſubject to the Conqueror's 'Will. For in this of the Norman, 'not only the Conqueror's Will was 'not declared, that the former Laws 'ſhould be abrogated, (and until ſuch 'Declaration, Laws remain in force, 'by the Opinion of [*k*] ſome, in all 'Conqueſts of Chriſtians againſt Chri-'ſtians) but alſo the ancient and for-'mer Laws of the Kingdom were con-'firmed by him. For in his fourth 'Year, by the Advice of his Baronage, 'he ſummoned to *London*, *omnes No-'biles*, *ſapientes*, *& Lege ſuâ eruditos*, '*ut eorum Leges & Conſuetudines audi-'ret*, as the words are of the Book of '*Litchfield*, and afterward confirmed 'them, as is further alſo related by [*l*] 'Roger of *Hoveden*. Thoſe, *Lege ſuâ 'eruditi*, were common Lawyers of that 'Time, as *Godric* and *Alfwin* were then 'alſo, who are ſpoken of in the Book 'of [*m*] *Abingdom*, to be, *Legibus 'Patriæ optime inſtituti*, *quibus tanta*

[*i*] Vid. Quintilian. lib. 5. Inſtitution. cap. 10. Athe. Gentil. de Jure belli. lib. 3. cap. 5. & Hottoman illuſt. Quæſt. 5.

[*k*] Calvin's Can. *fol.* 17. b

[*l*] in H. 2. P. 347.

[*m*] MS lib. 2. p. 35. & 30. in Bibl. Cotton.

ſecula-

'*ſecularium facundia & præteritorum*
'*memoria eventorum inerat, ut cæteri*
'*circumquaq; facilè eorum ſententiam*
'*ratam fuiſſe, quem edicerent, approbarent.*
'And theſe two, and divers other Com-
'mon Lawyers then lived in the Abby
'of *Abingdon*, *Quorum collationi nemo*
'*ſapiens* (ſays the Author) *refragabatur,*
'*quibus rem Eccleſiæ publicam tuentibus*
'*ejus oblocutores elingues fiebant.* You
'muſt know, that in thoſe days, every
'Monk here in *England*, that would,
'might remain ſo ſecular, that he
'might get Mony for himſelf, pur-
'chaſe, or receive by deſcent to his
'own uſe. And therefore it was fit
'enough for practiſing Lawyers to live
'in Monaſteries. But what had thoſe
'*præteritorum memoria eventorum* (that
'is, Reports, and adjudged Caſes of
'the Saxon Times) availed in their
'skill, if the former Laws had not
'continued? More obvious Teſtimo-
'nies to this purpoſe, are had out of
'[*u*] *Gervaſe* of *Tilbury*, *Ingulphus*,
'and others, and we here omit them.
'But alſo, indeed, it was not to be
'reputed a **Conqueſt**, or an Acquiſi-
'tion by right of War, (which might
'have deſtroyed the former Laws) ſo

[*u*] Videſis *Cok.* Præfat. ad Relat. 3. & 8. & ſi placet Not. ad forteſc. *p.* 7, & 8.

'much as a violent recovering of the 'Kingdom out of the hands of Rebels, 'which withſtood the Duke's pretence 'of a lawful Title, claimed by the 'Confeſſor's adoption, or deſignation 'of him for his Succeſſor; his near-'neſs of Blood on the Mother's ſide, 'not a little alſo aiding ſuch a pretence 'to a Crown. For the Confeſſor's Mo-'ther *Emme*, was Siſter to *Richard* the 'Second, Duke of *Normandy*, to 'whom, *William* was Grand-child and 'Heir. But theſe were only ſpecious 'Titles, and perhaps examined curi-'ouſly, neither of them were at that 'time enough. And howſoever his 'Conſcience ſo moved him at his death, 'that he profeſt he had got * *England* 'only by Blood and the Sword; yet 'alſo by expreſs Declaration in ſome 'of his Patents, he before pretended 'his Right from the Confeſſor's Gift. '[p] *In ore gladii*, ſaith he, *Regnum 'adeptus ſum Anglorum, devicto Ha-'raldo Rege, cum ſuis complicibus, qui 'mihi Regnum cum providentia Dei 'deſtinatum, & beneficio conceſſionis 'Domini, & cognati mei glorioſi Regis 'Edwardi conceſſum conati ſunt auſer-'re*, &c. And the Stories commonly 'tell

* Hiſtoria Cadonenſis.

[p] Chart. Eccleſ. Weſtm in inſpex. part 7. 1. Ed. 4. m. 26. & vid. *Camb.* pag. 104.

'tells us, That the Confeſſor *Succeſſionem Angliæ ei dedit.* And although *Harold* alſo pretended a Deviſe of the Kingdom to himſelf made by the Confeſſor *in extremis*, and urged alſo that the Cuſtom of *England* had been from the time of *Auguſtine*'s coming hither, [q] *Donationem quam in ultimo fine quis fecerit, eam ratam haberi*; and that the former Gift to the *Norman*, and his own Oath for eſtabliſhment of it, were not of force, becauſe they were made, [r] *abſque generali Senatus & Populi conventu & edicto*; yet for his own part, he was driven to put all upon the Fortune of the Field, and ſo loſt it. And the *Norman* with his Sword, and pretence of the ſufficiency and precedence of the Gift made to himſelf, got the Crown, as if he had been a lawful Succeſſor to the Confeſſor, and not an Univerſal Conqueror. All this is plain out of the Stories, and juſtified infallibly by that of the Titles of many common Perſons made to their Poſſeſſions in *England*, after his Kingdom ſetled, upon the poſſeſſion of themſelves or their Anceſtors, in time of the *Saxon* Kings, eſpecially

[q] MS. ſive Autor Guil. Pictav. ſive quis alius, ſit in Bibl. Cotton.

[r] *Malmesb.* lib. 5. de Geſt. Regum p. 56. a. alii in Will. 1. & videſis *Mat. Paris* in Hen. 3. p. 1257. Edit. Londin.

'especially of the Confessor. But this 'was always in case, where they by 'whose possession the Title was made, 'had not incurr'd Forfeiture by Rebel- 'lion. Many such Titles are clearly 'allowed in the Book of *Dooms-day*, 'written in the Conqueror's Time: 'One especially is noted by the most 'learned *Camden* in his *Norfolk*. That, 'as I remember, is touched in *Dooms- 'day* also, but enough others are di- 'sperse'd there which agree with it. How 'could such Titles have held, if he had 'made an absolute Conquest of Eng- 'land, wherein an Universal Acquisi- 'tion of all had been to the Conque- 'ror, and no Title could have been 'derived, but only from or under him? 'More might be brought to clear this, 'but we add here only the judicious 'Assertion of a great [*t*] Lawyer of '*Edward* the Third's Time; *Le Con- 'queror, saith he, ne vient pas pur ou- 'ster eux que avoient droiturell possession, 'mes de ouster eux que de leur tort avoi- 'ent occupie ascun terre en disheritance 'del Roy, & son Corone.* It was spo- 'ken upon an Objection made in a 'Quo Warranto against the Abbot of '*Peterborough*, touching a Charter of

[*t*] *Shard.* in cas. in itin. temp. Ed. 3. *fol.* 143. b.

'King

'King *Edgar*, which the King's 'Councel would have had void, be-'cauſe, by the Conqueſt all Franchi-'ſes, they ſaid, were devolved to the 'Crown. But, by the way, for that 'of his nearneſs of Blood, which could 'not but aid his other pretended Ti-'tle; let it not ſeem meerly vain, in 'regard of his being a Baſtard. There 'was good pretence for the help of 'that defect alſo. For, although the 'Laws of this Kingdom, and, I think 'of all other Civil States at this day, 'exclude Baſtards (without a ſubſe-'quent Legitimation) from Inheri-'tance; yet by the old Laws uſed by 'his Anceſtors and Country-men, that 'is, by thoſe of *Norway*, a Prince's 'Son gotten [*t*] on a Concubine bond 'or free, was equally inheritable as 'any other born in Wedlock; which 'was, I believe no ſmall Reaſon, why 'he ſtood at firſt ſo much for the Laws 'of *Norway* to have been generally 'received in this Kingdom. And ſome 'Stories alſo which make mention of 'Duke *Robert* his getting *William* on 'that *Arlet* or *Arlec* (as ſhe is ſometimes 'written) ſay, That ſhe was to him a 'good while *vice Uxoris*. So *Henry*

'of

[*t*] Vid. *Roger de Hoveden* in Rich. 1. *fol.* 425, & 347.

of [u] *Knyghton* Abbot of *Leiceſter*: *Tranſiens* (ſaith he) *Robertus aliquando per Phaleriam Urbem Normaniæ, vidit puellam* Arlec *nomine Pelleparii Filiam, inter cæteras in Chorea tripudiantem nocte ſequente illam ſibi conjunxit, quam vice Uxoris aliquamdiù tenens Willielmum ex ea generavit.* And he tells us alſo the common Tale of tearing her Smock. If ſhe were ſo his Concubine, or *Vice-conjux*, (between whom and a Wife, even the old [x] Imperials make no other difference but Honour and Dignity; and by them alſo ſome kind of Inheritance is allowed to [y] ſuch Baſtards as are *Naturales liberi*, that is gotten on Concubines); it was much more reaſonable that her Son ſhould be reputed as Legitimate, than that the Son of every ſingle Woman, bond or free, whether Concubine or no, ſhould be ſo, as the Laws of *Norway* allow. And when he had inherited his Dukedom, he made, doubtleſs, no queſtion, but that his Blood was as good in regard of all other Inheritances, that might by any colour be derived through it. And therefore *William* of *Malmsbury* well ſtiles him *proximè con-*

[u] In Bibl. Cotton.

[x] Fide Legat. 3. L. Item Legato 49. §. 4

[y] Authent. 89. c. 12. diſcretis igitur, &c.

'*conſanguineus* alſo to the **Confeſſor**, as 'he was indeed on the Mother's ſide. 'And thoſe [z] of the Poſterity of '*Edward* Son to *Iron-ſide*, were then 'ſo excluded or neglected, that their 'nearneſs on the Father's ſide could 'not prevent him. You may ſee the 'common Stories of them. But where-'as that excellent [a] Lawyer *Littleton* 'ſays, That *William* the **Conqueror** '*was called a Baſtard, becauſe he was* 'born before Marriage had between his 'Father and Mother, and that after he '*was born they were married*, (which 'indeed by the [b] Imperials, and by 'the general Law of [c] *France*, would 'have made him wholy legitimate); 'I doubt he had but little or no ground 'to juſtify it. Had he been ſo legiti-'mate, it is not likely he ſhould have 'been ſtiled ſo commonly and anci-'ently **Baſtardus**; which Name, even 'in his [d] own Charters he ſometimes 'uſed with **cognomento**; as alſo the Ba-'ſtards of the old *Philip* Duke of *Bur-'gundy* were wont to do; although of 'later Time it be reputed as a Name 'of diſhonour; and the *actio injuria-'rum*, or an Action upon the Caſe lies 'where-ever it be falſly objected, as

'ſome

[z] Videſis *Malmsb.* de Geſt. Reg. lib. 2. *fol* 52.

[a] 18. E. 4. *fol.* 30. a.

[b] C. tit. de Nat. lib. c. eum quis 10, &c.

[c] Videſis *Bacquet* de Domaino du fr-tract. du Baſtardiſe. c. 9, &c.

[d] Apud *Cambden* in Richmondia.

'some will [e] have it. But these 'things prove enough, that this *William* 'seized the Crown of *England*, 'not as **conquered**, but by pretence of 'Gift or Adoption, aided and confir- 'med by nearness of Blood; and so the '*Saxon* Laws formerly in force could 'not but continue: And such of them as 'are now abrogated, were not at all 'abrogated by his **Conquest**, but ei- 'ther by the Parliaments or Ordinan- 'ces of his Time, and of his Succes- 'sors, or else by non-usage or contra- 'ry Custom.

[e] Videsis Pont. Heuterum de liberis Natural. c. 12.

Surely then none can believe, that *William* claimed **only** by the Sword, and made an **absolute Conquest**; or that he **abolish'd** all the old Saxon **Laws**, and constituted a new Frame and Systeme of Government, entirely for the Interest of his *Normans*, and to the slavery and ruin of the whole *English*; nor can any one, me-thinks, after this, categorically attest that there were no **English Men** in the Common Council of the whole Kingdom; or that the **English** had neither Estates nor Fortunes left; and that therefore it were of no great matter and consequence to them, by what Law, Right, or

or Property, other Men held their Eſtates.

But not to dwell upon the great Authority of this Learned Man, we will now hear what Sir *Winſton Churchill* can inform us as to your Second Queſtion; *Whether the* Laws *were totally* abolished, *and a New Government ſet up, according to the* Arbitrary Will *and Pleaſure of this* Norman Conqueror?

And thus he writes, in his Book dedicated to his preſent Majeſty.

'Duke *William*, better known to us 'here by the Name of *the* Conqueror, who with like Confidence, and not unlike Injuſtice, (as *Rollo* did *Normandy*, the ſeventh in Deſcent, from 'whom was this Duke) invaded *England*, pretending a Donation of the 'Soveraignty from his near Kinſman 'King *Edward* the Confeſſor, confirmed, as he alledged, by his laſt Will 'and Teſtament, in the preſence of 'moſt of the *Engliſh* Nobility. But 'what we allow to the Courage, we 'muſt take from the Wiſdom of the '*Engliſh*; that being ſubdued, they 'con-

Sir *Winſt. Churchill's* Divi Britanni-ci. *fol.* 189.

Id. *fo.* 190.

'continued *neſcia vinci*, vexing the 'Conqueror, after they had ſubmitted 'to him, by ſuch continual Revolts, 'as ſuffered him not to ſheath his 'Sword all his Reign; or if he did, 'urged him to continue ſtill ſo ſuſpiti-'ous of their Loyalty, that he was 'forced always to keep his hand upon 'the Hilt, ready to draw it forth, ha-'ving not leaſure to intend what was 'before eſtabliſhed, much leſs to eſta-'bliſh what he before intended: So 'that they put upon him a kind of ne-'ceſſity of being a Tyrant, to make 'good his being a King: Yet ſuch was 'the moderation of his mind, that he 'choſe rather to bind them ſtricter to 'him by the old Laws, than to gall 'them with any New, guarding his 'Prerogative within that Citadel of 'the *Burrough Law* (as they called it) 'from whence, as often as they began 'to mutiny, he battered them with 'their own Ordnance, and ſo made 'them Parties to their own wrong; 'and however ſome that deſigned to 'preoccupate the Grace of Servitude, 'gave him the ungrateful Title of Con-'queror, which he eſteemed the greateſt 'misfortune his good Fortune had

'brought

'brought upon him) thereby to pro-
'claim his **Power** to be as **boundleſs** as
'his **Will**; which they took to be a-
'bove all Limitation or Contradiction;
'yet we find he ſuffered himſelf to be
'**ſo far conquered** by them, that in-
'ſtead of giving to, he took the Law
'from them, and contentedly bound
'himſelf up by thoſe, which they called
'**St. Edward's Laws**; which being an
'abbreviation of the great Tripple
'Code of *Danique*, *Merke*, and *Weſt-*
'*Sexe Laws*, was ſuch a form of Com-
'bination, as he himſelf could not de-
'ſire to introduce a better; and if
'any thing **look'd** like **Abſolute**, 'twas
'his diſarming them, when he found
'them thus **Law-bound** hand and
'foot.

From this Authority, Sir, I think, it is very plain and obvious, That

I. Here was no **Abſolute Conqueſt.**

II. That neither were all the **Saxon** Laws **cancelled** and **aboliſhed**, by the **coming in** of this **Conqueror.**

I. That here was no **Abſolute Conqueſt**; becauſe,

1. Tho' here was an **invading** *England*, yet it was *upon pretence of a Donation of the Soveraignty from* **Edward** *the* **Confeſſor**, confirmed by his laſt Will, and that *in the preſence of moſt of the* **Engliſh** *Nobility*. And ſo it was only an endeavour to get his own upon the Claim of an alledged **juſt Title**; which ſhewed he had, at leaſt, more reaſon to demand, than *Harold*, who, at beſt, was an Uſurper to detain the Crown: And ſo the Quarrel to be more Perſonal than National.
2. The **Conqueſt** could **not be Abſolute**, for tho' he was, by a happy ſucceſs over *Harold*, poſſeſſor of the **Engliſh** Throne; yet ſaith my Author, The Nation *continued, neſcia vinci*; ſo that whenever he was **Tyrannical** and **Arbitrary**, they were continually vexing him with their Revolts.

3. This

3. This **Conqueſt** could not be **abſolute**, becauſe then the **Engliſh** muſt have been **perfect Slaves** and Vaſſals to his *uncontroulable* **Beck**; but (alas!) here Sir *Winſton* tells you, the **Norman Conqueror** could find them no ſuch eaſy Beaſts of Burthen, their Necks would not bear the Yokes of his Severity; for they were ſeveral times up in Arms againſt him, and that *after they had ſubmitted to him:* ſo that at moſt this could be but a ſubmiſſion upon terms.

4. He was ſo far from being in love with the gawdy name of **Conqueror**, that when ſome, that *deſigned to preoccupate the Grace of Servitude, gave him that ungrateful Title, he eſteemed it the greateſt misfortune his good Fortune had brought upon him.* And,

5. The **Conqueſt** ſurely could not be **abſolute**, for then it would have been very idle and ridiculous for any one to ſay, what Sir *Winſton*, no doubt, but upon good and mature conſideration, hath thought fit to ſay of him, that *if any thing look'd like* **abſo-**

lute; and hereby you may plainly take notice, that he seems to wonder how any Man can pretend to make him an **absolute Conqueror**, when he could hardly find so much as *any thing to look like it*. But,

II. I shall observe to you, that neither were all the **Saxon** Laws **cancelled** and **abolished** by the **coming in** of this **Conqueror**.

1. If King *William* might have done **despotically** whatsoever he had a mind to, then what necessity was there for *such a moderation of his Mind*, as the Author hints to us?
2. Because he found the People were not to be *galled with any New*, *he chose rather* (but it was a choice upon Necessity) *to bind them stricter to him by the Old Laws*; that is, in plain down-right English, they would not yield to him, nor to his Government, unless he resolved to circumscribe his ruling of them, within the bounds of the good **Old Laws**, in which they

they were born and bred; and make his **French** and **Normans** come over and buckle to them.

3. *He ſuffered himſelf to be ſo far conquered by them*, as to let them have their **Old Laws**; and it was with a kind of good ſatisfaction too: For,
4. The Book tells you, *He contentedly bound himſelf up by thoſe which they called* **St. Edward's Laws**: And was there not, do ye think, very good Reaſon for his ſo doing? when thereby,
5. He underſtood at length, that it was a *guarding his Prerogative*, to keep *within that* **Cittadel** *of the* **Burrough Law.**
6. And laſtly, We cannot rationally think he would, after he had thereby throughly looked into them, **cancel** and **aboliſh** them; ſince thoſe **Laws** were ſuch, as, it is ſaid, *he himſelf could not deſire to introduce a better.*

I hope, Sir, all theſe Deductions ariſe naturally from the words themſelves, without any force or ſtrain upon the ſence; and what I have ſaid,

may be ſufficient to convince you, that King William ſtill kept to the Saxon Laws, and did not change the whole Frame and Conſtitution of the Government; as, you ſay, is very ſtrenuouſly, and with heat, aſſerted by ſeveral of our Modern Authors.

I ſhall yet make bold with your Patience, Sir, and ſhew you what *Florentius Wigornienſis*, (a famous Hiſtorian in King *Stephen*'s Time) and *Brompton* from him, ſay upon this Point, and ſo conclude my Argument.

Floren. Wig. fol. 650. *Henricus primus omnes malas conſuetudines & injuſtas exactiones (quibus Regnum Angliæ injuſtè opprimebatur) abſtulit, pacem firmam in toto Regno ſuo poſuit, & teneri præcepit. Legem Regis Edwardi omnibus in commune reddidit, cum illis emendationibus, quibus Pater ſuus illam emendavit.*

In Hen. 1. fol. 997, 998. *Brompton*'s words are the ſame, and therefore I ſhall content my ſelf with only referring you to the Book, without repeating them to you. And, Sir, from hence we may learn,

1. That

1. That this King *Henry*'s Father, **William** the Firſt, was ſo far from **cancelling** and **aboliſhing** K. Edward's **Laws**, that he made them to be the Common **ſtanding Laws** of the Land, to be equally and inviolably obſerved as well by the **Normans** as the **Engliſh**, for he ſays, *omnibus eam in commune reddidit*; unleſs you will underſtand the word *Omnibus* to be a particular Univerſal, and ſo only to include the **Normans**: And if ſo, then it follows likewiſe, That inſtead of the **Normans** giving to the **Engliſh** their **Laws**, the **Engliſh Laws** were impoſed upon the **Normans**.

2. And whereas there were, 'tis confeſt, ſome *Additional Laws* made in his Time, yet you may plainly obſerve hence, that they were grounded upon, and but a better Improvement and Melioration of the **Confeſſor**'s **Laws**; and they were for the Sake, **Benefit**, and Advantage of the **Engliſh**, as you will find hereafter.

3. *Henry* the First, Son to this Conqueror *William*, took away *omnes malas conſuetudines & injuſtas exactiones*, &c. by which England had been ſorely oppreſſed, under his Brother *William Rufus*, and reſtored the Engliſh to their former Rights and Liberties; and he renewed and confirmed the Ancient Saxon Laws, as his Father had done before him, as it is well noted in the continuation of the Hiſtory of *Bede*, *In Concilio peritorum & proborum virorum Regni Angliæ.*

[1] Bede *Hiſtor.* lib. 3. cap. 30. *fol.* 347.

4. But if there had been no Freemen but the Normans; if the Normans had all the Eſtates of the Engliſh given them; if there were none but Normans in the Common Councils of the Kingdom; how is it poſſible to be ſuppoſed, by any that will allow themſelves the free uſe of their Reaſon, that *Henry* the Firſt would ever make ſuch a Grant; or, if he did, that the Normans would ever ſubmit to it; or (what

(what is much more unlikely) give their conſent to **out** themſelves of all their new-gotten Poſſeſſions, and reduce themſelves back to this notorious *Dilemma*, *viz.* either to live **Vaſſals** and **Slaves** under the **Engliſh**, or elſe *vertere ſolum*, return to **Normandy**, from whence they came.

There is one thing more which I cannot but mention, and that is, The inconſiderateneſs of thoſe Men, who ſo mightily cry up the **abſolute Conqueſt** of **William** the **Firſt** over the **Engliſh**, as if they were utterly broken and cruſhed, and all their **Laws** and **Cuſtoms** *deſtroyed*; when, as it is demonſtrably manifeſt, that at the Time of **Robert** and his **Normans**, Treaſon and *Conſpiracy* againſt **William Rufus** then King, and his Brother, to cut off him, and make *Robert* King in his room; I ſay, then the Intereſt of the **Engliſh** was ſo great and powerful, that it kept the **Crown** upon *Rufus*'s Head, maugre all the Power of the **Normans**, who univerſally joined with *Robert*.

Sim. Dunelm. *An.* 1088. *fol.* 214. Angli eum fideliter juvabant.

But, Sir, now I will conſider the import of your next Queſtion.

The

The Third Question.

The Anonimous Author againſt Mr. Petyt. *p.* 43.

III. *Whether it be true, That the* **Engliſh** *had neither* **Eſtates** *nor* **Fortunes** *left, but all was divided between the* **King** *and his* Normans ?

THough it be confeſſed, that this firſt *William* obtained the **Imperial Crown** of **England**; yet I think I have clearly made it out to you, Sir, that it was by *a Reception upon Terms*, and not by **Right** of **Conqueſt**; and it is no leſs obvious, that the **Laws** in general, which were, after ſuch his **Acquiſition**, ratified and confirmed, and which continued in full force and power, were the old **Saxon Laws**; and though it cannot be denied, but that he did introduce ſome **new Laws** of his own, yet thoſe, *quas conſtituimus*, you have heard, were made, *ad utilitatem Anglorum*, for the Benefit and

and Advantage of the **English**, without the leaſt mention either of the **French** or **Normans**. And obſervable too it is, that thoſe Laws were made *per Commune Concilium totius Regni. Apud Lambard. inter Leges Guliel. primi, fol.* 170. *de Statut.* 55.

1. And if ſo, Sir, me-thinks this ſeems as one ſtrong Argument, that the **Engliſh** could not have all their **Eſtates** & **Fortunes** violently raviſhed from them; nor the **King** and his **Normans**, at their **coming in**, could not **abſolutely** ſweep away all the Stakes, becauſe the good **Old Law** was ſtill in its full being and virtue; * *which was the Metwand and Meaſure to try the Cauſes of the Subjects*; and, † *by which*, ſaith the wiſe King *James*, *the People's ſecurity of Lands, Livings, and Priviledges, were preſerved and maintained*; *and*, which alſo is, * *the Inheritance of every Subject, and the only ſecurity he can have for his Life or Eſtate.* And then they could not **loſe** all they had at this rate, but it muſt be by a manifeſt **wrong** to the **Priviledg**, as well as **well-being** of the **People**; and, no doubt, if the **Law** had its due courſe, as

* Co. 12. *Report. fol.* 65.

† *In his firſt Speech to his firſt Parliament*, in Engl. Stat. 1. Jac. c. 2. *fol.* 1157.

* *K.* Charl. 1. *Declaration to all his Loving Subjects publiſhed with the Advice of his Privy Council.* Exact Collect. &c. *p* 28.

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as I have made that plain it had, but that their **Native Rights** were easily **recoverable**; and the ravaging **Normans** could not keep them in spight of all Justice; for that were a total **abolishing** of the **Law**.

2. But in the next place, Sir, I make no question but that I shall convince you, that the **English**, at least those who lived in Peace **before**, and at his **coming** to the possession of the **English** Throne, did quietly and peaceably enjoy their Inheritances; and their Titles and Claims to them from their **Saxon Ancestors**, were held good and allowed; which, to be sure, they never could have done, had this Kingdom received such an **universal Change** and **Revolution**, as so many of our late Learned Authors would needs have us firmly to believe.

Sir Ric. Baker's *Chronic. fol.* 23.

Saith Sir *Richard Baker*, in his Chronicle of this King's Life and Reign; 'Though he hath had the Name of 'Conqueror, yet he used not the Kingdom as gotten by **Conquest**; for he 'took no Man's living from him, nor 'dispossessed any of their Goods, but 'such

'such only, whose demerit made them 'unworthy to hold them, as appears 'by his Act to one *Warren* a Norman, 'to whom he had given the Castle of '*Sherborne* in *Norfolk*. The Story is faithfully this, as you may find in *Cambden's Britannia*; The King, it seems, had given away *Sherborne* to *Warren* a Norman, and one that was his great Favourite; which *Edwinus de Sherborne* perceiving, who was the true Owner of the Castle, and an English Man, demands, before the King, his right, in open Court, tells him it did, *de jure*, belong to him, upon this Reason of Law, for that he never had took up Arms against the King, either before his coming in, or since; whereupon the King, *vinculo juramenti astrictus*, gave Judgment of Right against the Norman, and *Sherborne* recovered the Lordship.

Mr. Petyt's *Ancient Right of the Commons of* England *asserted.* Pref. *p.* 24.

Sir *Henry Spelman* tells you the Story, which he hath taken out of an Ancient Manuscript, concerning the Family of the *Sharborns*, thus; *Edwinus de Sharborne, & quidam alii, qui ejecti fuerunt è terris suis, abierunt ad* Conquestorem, *& dixerunt ei, quod nunquam*

Spelm. Gloss. verbo Drenches. *p.* 184.

nunquam ante Conquestum, *nec in* Conquestu *suo, nec post, fuerunt contra ipsum Regem in Consilio & Auxilio, sed tenuerunt se in pace. Et hoc parati sunt probare quomodo ipse Rex vellet ordinare. Per quod idem Rex fecit inquiri per totam Angliam si ita fuit, quod quidem probatum fuit: propter quod idem Rex præcepit, ut omnes illi qui sic tenuerunt se in pace in forma prædicta, quod ipsi, rehaberent omnes terras & donationes suas adeo integrè & in pace ut unquam habuerunt, vel tenuerunt ante* Conquestum *suum.* That is;

'*Edwin* of *Sharborn*, and several 'others that were ejected out of their 'Estates and Possessions, went to the 'Conqueror, and told him, that they 'never either before, or in, or after 'the Conquest, were against him the 'said King, either by their Advice, or 'any other Aid, but kept themselves 'peaceably and quietly. And this 'they were ready to make out, which 'way soever the King pleased to appoint. Whereupon the said King 'ordered an Inquisition to be made 'throughout all *England*, whether it 'were so or no; which was plainly 'proved: Therefore he presently

'com-

'commanded, that all thoſe who ſo kept 'themſelves peaceably in manner afore-'ſaid, as theſe had done, ſhould be 'repoſſeſſed of all their Eſtates and 'Inheritances as fully, amply, and 'quietly, as ever they had or held them 'before his **Conqueſt**.

This is a Caſe ſo full to the Point, and ſo plain to every common Underſtanding in its ſelf, that it would be frivolous to make any deductions from it. I ſhall preſume to repeat to you the words of a great and Learned Judg in the Reign of King *Edward* the Third, and give you his judicious Aſſertion of this Argument, (tho' it be cited before in that of Mr. *Selden*) becauſe it was agreed on as a main poſitive Rule of Law; and they are theſe;

Le Conqueror (ſaith he) *ne vient pas pour ouſter eux, qui avoient droiturell poſſeſſion, mes de ouſter eux que de lour tort avoient occupie aſcun terre en deſheritance del Roy & ſon Coronne.* 'The 'Conqueror came not to ouſt thoſe 'who had a Right Poſſeſſion, but to 'diſpoſſeſs thoſe, who, of their own 'wrong, had enjoyed any Land to 'the

Johannes Shardelowe unus Juſtic. de Banco. Rot. Pat. 16. E. 3. Pars 1. m. 3. in *Dugdalii* Chronica Series *annexed to his* Origines Juridiciales. *fol.* 44.

'the diſheriſon of the King and his 'Crown.

What ſhall we think after all this? That notwithſtanding, the *Engliſh* who had not been in Arms againſt William, had no Eſtates or Fortunes left, but all was divided between the King and his Normans? Surely no, but juſt the contrary, that they did enjoy them in as full, peaceable, and quiet a manner as ever they did, before he came to be this high and mighty Conqueror.

But again, let me give you, Sir, another Inſtance to inforce the Truth of this Argument.

In the 14. *Rich.* 2. ſome 290 Years ago, there happened a *memorable* Suit between the *King* and the *Prior* of *Coventry*, in the *King's Bench*, the King demanding *Annuam Penſionem pro uno Clericorum Regis*, as holding *de Domino Rege per Baroniam.*

Placita coram Rege Hill. Anno 14. R. 2. Rot. 50. Warvic. *Dodſworth* & *Dugdales* Monaſtic. Anglican. *Vol.* 1. *fol.* 305. *Col.* 1.

The Prior pleads, that he held *Prioratum prædictum*, upon the foundation of *Leofric*, *quondam Comitis Ceſtriæ*, founded in the Time *Sancti Edwardi*

Edwardi Regis Angliæ, and produces the Charters in Court, and then conveys the Title of Deſcent, thus;

Ibidem recitatur Charta ejuſdem Regis Edwardi, quas Donationes & Conceſſiones diverſi alii Reges confirmaverunt, & dicit quod poſtea per proceſſum temporis nomen Abbatiæ prædictæ divertebatur in nomen Prioratus, eo quod Leofwinus ad tunc Abbas ibidem creatus fuit in Epiſcopum Ceſtriæ, & ordinavit per Aſſenſum Monachorum ibidem quod Abbatia prædicta ex tunc foret Prioratus, & quod Superiores ejuſdem Eccleſiæ forent Priores ſucceſſivè in perpetuum, & dicit quod de ipſo Leofrico, quia obiit ſine Hærede de corpore ſuo deſcendente, Advocatio Eccleſiæ prædictæ tempore Willielm' Conqueſt' Angliæ cuidam Hugoni Comiti Ceſtriæ, ut Conſanguineo & hæredi, ipſius Leofrici, viz. Filio Erminilde ſororis ejuſdem Leofrici, *& de ipſo Hugone cuidam Richardo ut Filio & hæredi, & de ipſo Richardo cuidam Ranulpho, ut Conſanguineo & hæredi, viz. Filio Matildis Sororis prædicti Hugonis & de ipſo Ranulpho cuidam Ranulpho ut Filio & Hæredi, & de ipſo Ranulpho Filio Ranulphi, quia obiit ſine Hærede*

Jus Anglorum ab antiquo. *f.* 16. *in the Addition*, &c.

Not. *This is the* Hugh *to whom it is imagined by ſome, that* William *gave all the Lands of the County of* Cheſter.

de corpore ſuo deſcendente, Advocatio prædicta ſimul cum Comitatu Ceſtriæ & Huntingdon, & aliis diverſis Caſtris, Maneriis, terris & tenementis cum pertinentiis in Anglia & Wallia quibuſdam Matildæ, Mabilliæ, Ceciliæ & Margeriæ ut Sororibus & Hæredibus prædicti Ranulphi, inter quas propertia facta fuit de prædictis Comitatibus, Advocationibus & Caſtris, Maneriis, Terris & Tenementis cum pertinentiis ſupradictis. Et prædicta Advocatio, ſimul cum toto prædicto Comitatu Ceſtriæ, cum pertinentiis allocata fuit prædictæ Matilde pro proparte ſua in Allocationem diverſorum aliorum Caſtrorum, Manneriorum, Terrarum & Tenementorum cum pertinentiis prædictis Mabilliæ, Ceciliæ & Margeriæ ſeparatim allocatorum, & de ipſa Matilda deſcendebant prædicta Advocatio ſimul cum prædicto Comitatu Ceſtriæ cum pertinentiis poſt propertiam prædictam cuidam Johanni Scot ut Filio & hæredi prædictæ Matildæ, qui quidem Johannes Scot Advocationem prædictam ſimul cum prædicto Comitatu Ceſtriæ cnm Pertinentiis dedit Henrico quondam Regi Angliæ Filio Regis Johannis & hæredibus ſuis in perpetuum, &c. Prædictus Prior ſine die.

From

From this great Record, Sir, I think it is clear and evident;

1. That *Leofric* was Earl of *Cheſter* in the Reign of Edward the Confeſſor, and that he dying without Iſſue, the Earldom of *Cheſter*, and the Right of Advowſon of the Priory of *Coventry*, *tempore Willielmi Conqueſtoris Angliæ*, deſcended to *Hugh* Earl of *Cheſter*, *ut Conſanguineo & Hæredi ipſius Leofrici*, as being the Son of *Erminelde*, Siſter of *Leofric*; and that from that *Hugh*, deſcended *Richard* his Son and Heir; and from *Richard* deſcended *Ranulf*, as *conſanguineus & hæres*, that is the Son of *Maud*, Siſter of *Hugh*; and from that *Ranulph* another *Ranulph* his Son and Heir, *&c.*

2. Now if William, when he came in, made an abſolute Conqueſt, this Title had been impoſſible to have been maintained.

3. It appears further, That the Plea of the Prior was allowed; for the Record ſaith, *Prædictus Prior ſine die.* And the Advowſon aforeſaid, *ſimul cum Comitatu Ceſtriæ & Huntingdon, & aliis diverſis Maneriis, Terris & Tenementis, cum pertinentiis, &c.* did deſcend. And it is to be obſerved, that Judgment being given upon ſolemn Debate and Tryal, neither the Judges, nor the King's Counſel, ſo many hundred Years ago, as in the Age of *Richard* the Second, knew any thing of this new received Notion of an **abſolute Conqueſt.** And again,

4. 'Tis yet further obſervable, that the Charter of *Leofric*, and the Title of the Prior had been confirmed, *per diverſos alios Reges*, who muſt certainly have greater knowledg of the Nature of *William* the Firſt his **Conqueſt** or **Government**, than any Man can pretend to in our Times.

But

But further, Sir, I will make bold with your Patience, and give you ſome few Inſtances, of the very many that I could, out of *Dooms-day* Book, to ſatisfy you, that there were many **Proprietors** of **Engliſh Men**, who had their Free-hold Eſtates, upon Titles paramount to any of the **Conqueror's** Donation. Thoſe I ſhall take from that induſtrious and worthy Gentleman, Mr. *Attwood's* Book, intituled, *Jus Anglorum ab Antiquo*, where, in his excellent Hiſtory of the **Conqueſt**; among others he hath theſe following, *Viz.* Jus Anglorum ab Antiquo. *p.* 80, 81, 83, 87, 89, 90.

Surrey.

1. *Hugo de Port* was a very great **Proprietor**, as may be found under the Title, *Terra Hugonis de Port*: Many *Mannors* he had; and as appears in *Hampſhire*, he had at leaſt two *Mannors*, *Cerdeford* and *Eſchetune*, from his *Anceſtors*, before **William's** Entrance. Pa. 80. *He was not* Tainus Regis.

And even this is a ground to believe, he was a great Man, that he had a Sir-name, or Addition:

Becauſe, if we believe the Great Antiquary, Mr. *Cambden*, *Sir-names were not ſetled among the Common People fully, till about the Time of* Edw. 2.

Camb. *Rem.* p. 136.

Ipſe Comes tenuit Eſtreham. T.R.E.

2. The Earl of *Moreton*, a very powerful *Prince*, as I may call him, held *Eſtreham* in *Tenrige* Hundred, in the Time of King Edward. He enjoyed ſeveral other great Poſſeſſions of the Gift of King William. I doubt not indeed but he was a Norman born, yet he was here before the entrance of the Norman Duke, and might, not improbably, be in Favour with King Edward the Confeſſor, who was all *Frenchified*. He, to be ſure, had ſome Lands within the Kingdom of *England*, which he enjoyed not from William's Diviſion.

Camb. *Rem.* p. 136.

Pag. 176.

Hamp-

Hampſhire.

3. *Ralph Mortimer* held ſeveral Poſſeſſions, ſome of which he had *Jure Hæreditario*, from before the Reputed Conqueſt. *Ipſe Radulphus tenet Ordie:* This Mannor T. R. E. *extra Eccleſiam emptum fuit, eo pacto & conventione, ut poſt tertium hæredem cum omni pecunia Manerium Eccleſia Sancti Petri de Epiſcopatu recuperet; nunc qui tenet Radulphus, eſt tertius hæres.*

Dorſetſhire. *Dorſete.*

4. Ten *Thains* hold *Chimedecome. Ipſi tenuerunt* T. R. E. *pro* 1. *Manerio. Omnes qui has terras tenuerunt* T. R. E. *potuerunt ire ad quem Dominum volebant.*

Staffordſhire. *Statfordſcire*

5. *Alric* holds *Stagriſgeſhowe.* } And
Aſwold holds *Chrocheſdene.* }
14. more hold Lands of Titles, Prior to King *William's*, amongſt

Ipſi has Terras tenuerunt T. R. E.

which the Earls, *Hugh de Ferriers*, and *Alberic de Vere*; the first of which held St. *Warburgh* of *Chester*, in the Time of the Confessor.

6. And lastly; *Ulfred* held several Lands in the Time of King Edward, as in the Time of William the First. Besides, several dispossessed, who have their Titles allowed.

I think these six Instances are enough (referring the more curious to Mr. *Attwood*'s Book before mentioned, or to the great Survey it self) to bear out my Assertion, 'That the English 'had Estates and Fortunes still in their 'hands, which they held in King 'Edward's Time, and did not derive 'under King William's Title.

Having now given you these six Individuals, I shall offer you three more, and they are from the Charters of King William; the *one* to the *Dean* of St. *Pauls*, confirming to him the Lands, &c. belonging to that *Church*, and this was upon the day of his Co-

ronation

coronation too: The *other* is to the Abby of *Weſtminſter*: and the *third* to the City of London, granting to them the *Liberties* and *Franchiſes* which they enjoyed in the Time of Edward the Confeſſor.

To begin with *that* made to the *Dean* of St. *Pauls*.

1. *Ego Willielmus Dei Gratia Rex Anglorum, una cum Mathilda Reginâ, Principibuſq; meis, coram conventu Sacerdotum Dei, Reverendis ſcilicet Archiepiſcopis Aldredo & Stigando, cæteriſq; Epiſcopis & Abbatibus hujus Patriæ, terras Monaſterii Sancti Pauli, quæ in tempore Anteceſſorum meorum à quibuſlibet hominibus ablatæ fuerant, & injuſtè detentæ, omnes in die primi Diadematis & Coronationis meæ, Deo, ejuſq; Apoſtolo Paulo in Lundonia, & eorum ſervitoribus in perpetuum poſſidendas reſtitui, & eas ex omni parte liberas eſſe conceſſi.*

Carta Regis Williel. Conqueſtor. in Appendice in Hiſtor. Eccleſ. Cathedr. S. Pauli. *By Sir* Will. Dugdale, *fol.* 190.

2. Wil-

Cartæ. Antiq. C.C. n. 31.

2. William the First gives the Church of Westminster, *decimam de Wic de eadem parte quæ ad me pertinebat, atq; iterùm reddidi eandem partem eis injustè ablatam quàm Rex Edwardus antea dederat.*

So that we see, that as on the one hand William the First gave them the *Tithes* of that part which was his right; so likewise he restored the *Tithes* of that part which was unjustly taken from that *Church*, and which Edward the Confessor had before given. And no Conquest was here pretended, but the Precedent proves the quite contrary, *viz.* that there was none insisted on.

3. And now I come to that respecting the City of London.

'Williem King grets Williem Bis-
'ceop and Godfred * Porterefan,
'& ealle ya Burghwarn binnen
'London Frencise & Englise
'frendlice, & Ic kiden eoy, yeet
'Ic wille yeet git ben ealra weera
'la gayweord, ye get weeran on
Eadwerds

*] Porteregravan portgrave. Saxonicè. Hollinshead's 3d Vol. fol. 15, 2. Col. n. 21.

'Eadwerds daege Kings. And Ic 'wille yeet aelc child by his Fa-'der yrfnume, aefter his Faders 'daege. And Ic nelle ge Wolian, 'yeet aenig man eoy aenis wrang 'beode. God eoy heald.

Willielmus Rex Salutat Willielmum Epiſcopum & Goffridum Portegreſium, & omnem Burgwere infra London Franſ. & Angl. *amicabiliter. Et vobis notum facio, quòd ego volo quòd vos ſitis omni lege illa digni qua fuiſtis Edwardi diebus Regis. Et volo quod omnis Puer ſit Patris ſui hæres poſt diem Patris ſui. Et ego nolo pati quòd aliquis homo aliquam injuriam vobis inferat. Deus vos ſalvet.*

Engliſhed in *Stow*'s Survey of *London*, thus: Stow's *Survey of* London, *fol.* 740.

'William King grete William Biſhop 'and Godfrey Porters and al the 'Burgeis within *Landen* Frenſh 'and *Engliſh*. And I grant you 'that I wyll that *yee be all your 'Lawe worth*, that ye were in '*Edwardis daye* the King. And 'I wyl that ich Childe be his 'Faders

'Faders Eyer. And I nyl ſuffur,
'that ony Man you any wrongys
'beed. And God you kepe.

Now 'tis evident from this Charter;

1. That it was made, immediately upon, or after, the Coronation of **William**; becauſe, you ſee, he ſtiles himſelf **King**.

2. This may ſeem to *juſtify*, not only what the *Hiſtorians*, who lived neareſt his Time, (as *Pictavienſis*, &c.) but what his **own Laws** do likewiſe declare, *viz.* That he was *crowned* King by **compact** with the *Engliſh*, and at the ſame time ſwore inviolably to obſerve King **Edwards Laws**, which he confirmed to them.

3. With this further, That he denounced a **ſevere Prohibition**, that no Man ſhould *offer* any *affront*, or *do* any *wrong* to the **Citizens of London**.

4. And for a compleat aſſurance of all this his **Love** and **Kindneſs** to the

the City, he concludes with a Prayer to Heaven, That *God would keep and bleſs them.*

But by the way give me leave to ſhew you (though I think likewiſe it does not a little contribute to the *ſtrength* and *validity* of my *Argument*) the Greatneſs and Power of the City of London in thoſe early Times, I ſhall *tranſcribe* the words of a *Learned Writer* concerning it, and ſo leave it to your more ſerious conſideration.

William Stephanides, a Monk of *Canterbury*, born (as *Stow* ſaith in his fore-cited Book) of Worſhipful Parents in the City of London, and who lived in the Reign of King *Stephen*, in his deſcription of it, hath theſe words.

Stephanid. Deſcriptio Nobiliſſimæ Civitatis Londoniæ, *in* Stow's Survey, *&c. fol.* 704. de ſitu ejuſdem.

Inter Nobiles Urbes Orbis quas fama celebrat, Civitas Londonia, Regni Anglorum ſedes una eſt, quæ famam ſui latiùs diffundit, opes & merces longiùs tranſmittit, caput altius extollit. Fœlix eſt aëris ſalubritate, Chriſtianâ Religione, firmitate munitionum, naturâ ſitûs, honore

honore Civium, pudicitiâ matronali, ludis etiam quàm jucunda, & Nobilium fœcunda virorum.

Id. fol. 705. *Urbs ista viris est honorata, armis decorata, multo habitatore populosa, ut tempore Bellicæ cladis sub Rege Stephano bello apti, ex eâ exeuntes ostentatui, haberentur 20000 Armatorum Equitum, 60 millè Peditum æstimarentur. Cives Londoniæ ubicunq; locorum præ omnibus aliis Civibus ornatu morum, vestium & mensæ, locutione, spectabiles & noti habentur.*

Which in English is thus;

'Of all the celebrated Cities in 'the World, this of London is the Me'tropolis of England; a City of a 'very extensive Fame in its self, but 'much more honourable by the Na'tive Treasure and Commodities 'which she exporteth. Happy is she 'in the temperature of her Climate, 'in the soundness of her Doctrine, 'strength of her Forts, agreeableness 'of her Situation; in the Credit and 'Reputation of her Citizens; the 'unblemish'd Chastity of the Female 'Sex; innocently pleasant, even in

'her

'her Recreations, and honoured with 'a numerous Train of Nobility.

'The Grandeur of this City chiefly 'conſiſts in the Properneſs and Valour 'of her Men; in the bravery of her 'Armour, the multitude of her In-'habitants: ſo that in the fatal Wars 'in King *Stephen*'s Reign, there ap-'peared, on a Muſter, 20000 Horſe, 'and 60000 Foot, all armed Soul-'diers. The Citizens of *London* are 'known and eſteemed beyond all o-'ther Perſons, whereſoever they tra-'vel, for their gentile Deportment, 'their good Apparel, their Table, and 'Diſcourſe.

So that we ſee from hence, that in the Reign of King *Stephen*, who was *Nephew* to King **William the Firſt**, (from whoſe Death, to King *Stephen*'s Reign, there were not fifty Years) the **City of London** was very great and powerful; but had the **Engliſh Citizens** been **all** deſtroyed, and had all their **Eſtates** and **Fortunes** been (as is ſo poſitively affirmed) **taken away** from them by **William the Firſt**, it had been impoſſible, in ſo ſhort a Time, for them to have riſen

ſen again to that *degree* of *Fame* and *Renown* through all this part of the World, as the *Hiſtorian*, who was an *Eye-Witneſs* of it, ſo credibly aſſures us.

My next deſign is to ſhew you, That from the *General Direction* of the **Writs** and **Charters** in King **William the Firſt** his Time, it is plainly demonſtrable, that **William**, the pretended **Conqueror**, did not *divide* all the **Lands** of **England** amongſt his **Norman** followers to hold of him.

Dugdal. *Hiſt. of St.* Pauls, *in the Appendix. fol.* 196.

1. W. Cynꝫ ꝫꞃeꝛ Oſmund biſceoþ oꝼ Þeaꞃbyriꝫ ⁊ Rob. oꝼ Ɛli. ⁊ Pieðꞃeſ oꝼ Valloniis ⁊ ealle his ſciꞃꝫeꞃeꝛan ⁊ hiſ holðan Fꞃenciſce, ⁊ Ɛnꝫliſce, ꝼꞃenðliſce.

Id eſt;

Nota, *Here are Engliſh Sheriffs, and other Engliſh Officers, as well as French.*)

1. *W. Rex Saluto Oſmundum Epiſcopum Saresburienſem, & Robertum de Ely, & Petrum de Valoniis, omneſque præfectos ſuos et fideles, Francos et* Anglos, *amicè.*

2. Williem

2. Willem Cynꝫ ꝯhet mines b'pes ⁊ mind Eoꝑles ⁊ ealle mind Ðeꝯnes ꝼꝑeneiſſe ⁊ Engliſce. Chart. Antiq. I.

'Willem gret mines Biſhops, and 'mind Eorles, and ealle mind Thegnes, 'Freneiſſe and *Engliſce.* *Here were Engl. Thains.* Thani Appellatione viri interdum Nobiles, interdum liberæ Conditionis Homines, interdum Magiſtratus, atque ſæpenumero Miniſtri notantur. Gloſſ. in fin. *Lambard.* de priſ. Angl leg. *fol.* 223. *Col.* 1. tit. Thanus.

3. *W. Rex Anglorum O. Epiſcopo Sarisburienſi et L. Abbati Glaſtonienſi et A. Vicecomiti omnibuſq; Baronibus Francigenis et* Anglis *de Sumerſeta, et de Wiltunſcire, Salutem.* Monaſt. Angl. *Vol.* 1. *fo.* 185.

4. *Willielmus Rex Angliæ Archiepiſcopo T. Eboraci, et Juſticiariis et Vicecomitibus, et omnibus Baronibus & Fidelibus ſuis, Francis et* Anglis *de Eboraciſcire, et de Carleoli, Salutem.* Id. *fol.* 397.

5. *Willielmus Rex Anglorum Walterio Vicecomiti, et omnibus Baronibus ſuis Francigenis, et* Anglis *de Comitatu de Gloceſtre, Salutem.* Id. *fol.* 29.

Id. ibid. 6. *Willielmus Dei Gratia Rex Anglorum, Fidelibus ſuis Francigenis et* Anglis, *Salutem.*

Id. ibid. 7. *Willielmus Rex Anglorum Epiſcopo de Suthſexa et Vicecomiti, et cæteris Baronibus ſuis Francigenis et* Anglis, *Salutem.*

Id. *Vol.* 2. *fo.* 845. 8. *Willielmus Rex Angliæ, G. Vicecom' et Baronibus ſuis* de Caerleil, *Salutem.*

Id. *fol.* 845. 9. *Willielmus Rex Angliæ Thomæ Archiepiſcopo et Beritramo de Verdun, et Baronibus ſuis, Francis et* Anglis *de Everwicſcire, Salutem.*

Cart. Antiq. N 10. *Henricus Rex Angliæ Richardo Epiſcopo London, et Vic' et Præpoſito, et omnibus Baronibus et Fidelibus ſuis, Francis et* Anglis, *de London et Middleſex, Salutem.*

Id. Ibid. 11. *Henricus Rex Angliæ Vic' et* Baronibus London.

Dugdal. *Hiſt. of St.* Pauls, *in the Appendix. fol.* 197. 12. *Henricus Dei Gratia Rex Angliæ, Archiepiſcopis et Epiſcopis, et Comitibus*

Angliæ; *et Hugoni de Boclande, et omnibus Baronibus & fidelibus ſuis, Francis et* Anglis, *de* Lundonia, *et de* Middleſexa, *et de tota* Anglia, *Salutem.*

By theſe **Writs** and **Charters**, Sir, (though many more of the like nature might eaſily be given) I think, with ſubmiſſion, my **Argument** is firmly maintained; and the **plain Engliſh** of them all is, no more than this, That in **William the firſt's** Time there were **Engliſh Barons** as well as **French Barons**, in *Somerſetſhire* and *Wiltſhire*; in *York-ſhire* and *Carliſle*; in *Glouceſterſhire* and in *Suſſex*: and the **direction** of the **Writs** and **Charters** is equally given to them both, without any *difference* of *Power* or *Authority* mentioned, otherwiſe, than that the **French** Barons had the *precedency* of the **Engliſh** in thoſe Writs and **Charters**: * With what force of truth then can it be defended, That the **Norman Nobility** were at that time the **only Nobility**, I appeal to the World.

* *As is aſſerted by the ſaid Anonimus Author againſt Mr.* Petyt, p. 151.

But, I pray, now hear two Branches of his MAGNA CHARTA, or Great Charter, which he granted to the English, and they run thus;

Apud Cl. Lambard. LL. Will. prim. *fol.* 170. c. 55.

1. *Volumus etiam ac firmiter præcipimus & concedimus, ut omnes liberi homines totius Monarchiæ Regni noſtri prædicti, habeant & teneant terras ſuas, & poſſeſſiones ſuas, bene & in pace liberè* AB OMNI EXACTIONE INJUSTA, *&* AB OMNI TALLAGIO; *ita quod nihil ab eis exigatur, vel capiatur, niſi* SERVITIUM SUUM LIBERUM, *quod de Jure nobis facere debent, & facere tenentur, & prout* STATUTUM *eſt eis, & illis à nobis datum et conceſſum* JURE HÆREDITARIO *in perpetuum,* PER COMMUNE CONCILIUM TOTIUS REGNI NOSTRI *prædicti.*

The Second Branch is;

Id. c. 63.

2. *Hoc quoque præcipimus,* UT OMNES HABEANT ET TENEANT LEGES EDWARDI REGIS *in omnibus rebus, adauctis hiis quas conſtituimus* AD UTILITATEM ANGLORUM.

*

Sir,

Sir, I think by these two Branches, you may plainly see, King **William** when he came in, was so far from **forcibly taking** away the **Lands** and **Possessions** of the **English**, and sharing them among his **Normans**; that he doth, if possible, more strongly establish their **Estates** to them, by confirming the good and **ancient Laws** of **Edward the Confessor**, which were their best security of all they enjoyed before his entrance; and not only so, but by freeing them from all *unjust Taxes* and *Exactions*, excepting only their *free Service*, which *of right* was owing to him, and which they were to do, as it was agreed on by themselves, and granted by him to them by **hereditary Right** for ever, and that *by the* **Common Council** *of the whole Kingdom*; and this was done too **wholly** for the **sake** and **benefit** of the **English**.

I shall trouble you, Sir, with one more very memorable **Record**, as late as to the 26. *Hen.* 3. which shews, That from before the **coming in** of this **Norman Conqueror**, down to that

But, I pray, now hear two Branches of his MAGNA CHARTA, or Great Charter, which he granted to the English, and they run thus;

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The Second Branch is;

Id. c. 83.

2. *Hoc quoque præcipimus,* UT OMNES HABEANT ET TENEANT LEGES EDWARDI REGIS *in omnibus rebus, adauctis hiis quas conſtituimus* AD UTILITATEM ANGLORUM.

*

Sir,

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I ſhall trouble you, Sir, with one more very memorable **Record**, as late as to the 26. *Hen.* 3. which ſhews, That from before the **coming in** of this **Norman Conqueror**, down to that

Time, the English had a Property continued to them; and ſo then this MIGHTY MAN of VICTORY did not govern them as an entire and abſolute Conqueror, what-ever our *late Writers* have been pleaſed to *publiſh* to the World.

The words of the Record are;

Communia de Term. Sanct. Mich. 35. fin. & An. 36. incipien. H. 3. Rot. pr. penes Remem. dom. Theſ. Jus Anglorum ab Antiq. p. 112, 113. Serjantia tempore Edwardi Confeſ.

Pro Jacobo Archamgere.

Rex Baronibus; Mandamus vobis quod occaſione arrentationis Serjantiarum, aſſeſſæ per Robertum Paſſelewe, *non diſtringas* Jacobum *de* Archamgere *per 2. Marc. & dimid. de Tenemento quod de nobis tenet per Serjantiam in* Archamgere, (*in Comitatu* Southampton, &c.) *per Chartam Beati Regis* Edwardi *Anteceſſoribus ipſius* Jacobi *ſuper hoc confectam, ſed ipſum* Jacobum *de prædictis 2. Marcis & dimid' quietum eſſe faciatis in perpetuum; quia Chartam præfati beati* Edwardi *confirmavimus, & ipſam volumus inviolabiliter obſervari.*

Breve eſt in fornlo Mareſcalli, & Mandatum eſt Vicecomiti Southhampton

hampton *comparat. die Jovis, die 15. Jan. Anno Domini*, &c.

The Engliſh of it is this:

For *Jacob Archamgere.*

'The King to the Barons: We com-'mand you, that by the occaſion of 'the Rent of Serjanties, aſſeſſed by *Ro-'bert Paſſelewe*, you ſhall not diſtrain '*Jacob* of *Archamgere* by two Marks 'and an half, for the Tenement which 'he holds of us by Serjantie in *Ar-'chamgere*, in the County of *Southamp-'ton*, and granted by the Charter of 'the Bleſſed King Edward, to the An-'ceſtors of this *Jacob*; but he the ſaid '*Jacob* ſhall for ever be freed from the 'aforeſaid two Marks and an half; be-'cauſe we have confirmed the Charter 'of the aforementioned St. Edward; 'and we will have it to be inviolably 'obſerved.

I ſhall make no Remarks upon this Charter, becauſe it is obvious to every intelligent Reader; the thing I drive at, is, to prove, That the Engliſh were not violently diſpoſſeſſed of their

Properties, which they quietly held and enjoyed in the Time of Edward the Confessor, but that they still enjoyed them as before, notwithstanding all the vain pretences to the contrary.

And now, Sir, I shall close up this third Point, with a remarkable Passage or two out of Ordericus Vitalis, a famous *Historian*, who lived and writ in the latter *end* of the Reign of *H.* 1. and *beginning* of K. Stephen, and for that reason must needs be admitted (next to a *Testis Oculatis*) for a Testimony beyond all exceptions.

His words are,

Orderic. Vitalis Eccles Hist. lib. 3. *fol.* 503.

'Omnia disponente Deo in spatio 'trium mensium per Angliam pacata 'sunt, cunctiq; Præsules Regniq; Pro'ceres cum Willielmo concordiam fe'cerunt, ac ut Diadema Regium su'meret, (sicut Mos Anglici Principa'tus exigit) oraverunt. Hoc sum'moperè flagitabant Normanni, qui 'pro fasce Regali nanciscendo suo 'Principi subierunt ingens discrimen 'maris & Prælii. Hoc etiam divino

Nutu

'Nutu ſubacti optabant Indigenæ Reg-
'ni, qui niſi coronato Regi ſervire
'hactenus erant ſoliti.

The next Paragraph but one to this goes on thus.

'Denique Anno ab incarnatione
'Domini MLXVII. Indictione V. in die
'Natalis Domini, Angli Lundoniæ ad
'Ordinandum Regem convenerunt,
'& Normannorum Turmæ circa Mo-
'naſterium in armis & equis (nè quid
'doli & ſeditionis oriretur) præſidio
'diſpoſitæ fuerunt. Adelredus itaq;
'Archiepiſcopus in Baſilica Sancti Pe-
'tri Apoſtolorum Principis, quæ Weſt-
'monaſterium nuncupatur, ubi Ed-
'wardus Rex venerabiliter humatus
'quieſcit, in præſentia Præſulum &
'Abbatum Procerumq; totius Regni
'Albionis, Gulielmum Ducem Nor-
'mannorum in Regem Anglorum con-
'ſecravit, & Diadema Regium capiti
'ejus impoſuit.

'Gulielmus Rex multa Lundoniæ
'poſtquam coronatus eſt, prudentèr,
'juſtè, clementerq; diſpoſuit: quæ-
'dam ad ipſius Civitatis commoda vel
'dignitatem, alia quæ genti proficerent

Id. lib. IV. *fol.* 505, & 506.

'rent Univerſæ : Nonnulla quibus
'conſuleretur Eccleſiis terræ. Jura
'quæcumq; dictavit optimis rationi-
'bus ſanxit ; Judicium Rectum nulla
'perſona nequicquam ab eo poſtulavit.
'Neminem, niſi quem non damnare
'iniquum foret, damnavit. Suis quo-
'que Primatibus digna ſe & gravitate
'præcepit, & diligenter æquitatem
'ſuaſit ; Eſſe jugiter in Oculis haben-
'dum æternum Regem, cujus vicerint
'præſidio. Nimium opprimi victos
'non opportere, victoribus profeſſio-
'ne Chriſtianâ pares, nè quos juſtè
'ſubegerint, injuriis ad rebellandum
'cogerent. Seditiones interdixit, cæ-
'dem, & omnem rapinam frænans, ut
'Populos armis, ita legibus Arma.
'Tributis & cunctis rebus ad Regium
'fiſcum reddendis, modum, qui non
'gravaret, impoſuit, Latrociniis, In-
'vaſionibus, Maleficiis, locum omnem
'intra ſuos terminos denegavit. Por-
'tus & quælibet itinera Negotiatori-
'bus patere, & nullam injuriam fieri
'juſſit. Sic omnino proba ejus in
'regnando initia fuere, & incrementa
'probitatum ad utilitatem Subditorum
'liquidò fulſere, que in bonis perſe-
'verantia laudabiliſq; finis evidentibus
'ſignis confirmavere. The

The ſence of which is,

King **William** having ſworn **inviolably** to obſerve the **Laws** of **Edward the Confeſſor**, as I have already acquainted you, and being crowned King, the whole **Engliſh Nation** in three months time quietly ſubmitted to him; which the *Hiſtorian* obſerves to be by *Divine Providence:* And they much relyed upon the **force** of that **Solemn Oath** he took; and great cauſe they had for their doing ſo; for,

Remarkable is it, that in the beginning of his Reign, he made a conſcience to keep it; and this the *Hiſtorian* plainly proves: for ſo **far** was he from **pretending** to be a **Conqueror**, or from exerciſing **abſolute Power** and **Soveraignty** over the **Engliſh**, that you ſee he denied to none right Judgment who required it of him; he **condemned none** but thoſe who deſerved it by the **condemnation** of the **Law**; he ſtrictly commanded his great Men, to whom he had **given** the **Eſtates** of thoſe who had been **bold** in **Arms** againſt him, under King **Harold**, that

that they ſhould behave themſelves with all due **moderation** and **temper**; and he **invited** them to *Acts* of **Juſtice** by his **Example**: He charged them always to have God before their Eyes, by whoſe Arms they had ſo far overcome; That they ſhould, nay ought, not too much to oppreſs thoſe they had got the better of, who were Chriſtians with them, leſt thoſe whom they had juſtly ſubdued, ſhould by ſuch their Oppreſſions be forced to rebel again; he ſtrictly forbad them all Violences, that they ſhould reſtrain themſelves from all Cruelties and Rapines; *That as the People ſhould be kept in Peace by his Arms; ſo their Arms ſhould ſubmit to, and be governed by the Laws.*

Nor did he only give this admirable Advice, but he prudently governed himſelf, and ſet eaſy Boundaries to thoſe Services, Taxes, & Aids, *quod de jure facere debent*, which were due to him by the Law; he abſolutely denied all Pardons and Grace to Robbers, and all diſturbers of the Publick Peace, and wicked Perſons: He commanded all the Roads to be free and open for Tra-

Apud Lambar. LL. Wil. prim. *fol.* 170. *c.* 55.

Travellers, and that no Injuries ſhould be done them; ſo that the beginning of his Reign was, as it were, a Golden Age; and his Clemency, and other Acts of Goodneſs, ſtill ſhone brighter to the happineſs of his Subjects, which was confirmed towards the Loyal and Dutiful, by his ſteady and commendable perſeverance.

Where, in all this, is there any pretence to abſolute Conqueſt and deſpotical Dominion?

And now to conclude; I ſhall produce an Evidence, that is *omni exceptione major*; it is *Gulielmus Pictavenſis*, who, (as *Ordericus Vitalis in fine litri tertii* writes) was, *Regis Gulielmi Capellanus*, and writ the Acts of *William* the Firſt. And he categorically ſays it, That *Nulli tamen Gallo datum eſt quod Anglo cuiquam injuſtè fuerit ablatum*; that is, according to the Judgment given in Sharborn's caſe, That thoſe who had kept themſelves unconcerned, and had neither, conſilio vel auxilio, aſſiſted Harold againſt William, had the full and free benefit of the Saxon Laws, and had *not* their Eſtates

Estates unjustly taken from any of them, and given to his French and Normans. *Gulielm. Pictavens. in Gesta Gulielm. Ducis Norman. & Regis Anglorum. fol.* 208.

But I will leave this, Sir, and now come to your fourth and last Question.

The

The Fourth Queſtion.

IV. *Whether it be not a* **Grand Error** *to affirm, That there were* **no Engliſh Men** *in the* **Common Council** *of the* **Whole Kingdom.**

The Anonimus Author againſt Mr. Petyt. *p.* 37.

Our Government, ſaith the Learned and moſt judicious Mr. *Hunt*, *by a King and Eſtates of Parliament, is as ancient as any thing can be remembred of the Nation. The attempt of altering it in all Ages accounted Treaſon, and the puniſhment thereof reſerved to the Parliament by* 25. Ed. 3. *The conſervancy of the Government being not ſafely to be lodged any where, but with the Government it ſelf. Offences of this Kind not pardonable by the King, becauſe it is not in his Power to change it. This is Our Government, and thus it is eſtabliſhed, and for Ages, and immemorial Time hath thus continued; a long ſucceſſion of Kings have recognized it to be ſuch.*

In his Argument for the Biſhops Right in judging in Capital Cauſes in Parliament. Poſtſcript. p. 2.

This

This too perhaps will be granted, Sir, in ſome ſence, that for a long Series, and Tract of Time, the **Government** hath been ſo; but the main **pinch** and **ſtreſs** of your **Queſtion**, as I apprehend it, is this, Whether after **William** the **Conqueror** had ſetled himſelf as well as he could on the **Engliſh Throne**, he did admit any of the **Engliſh** to ſit in the **Great Council** of the Nation, and to Adviſe and Conſult, *de arduis & Urgentibus negotiis Regni?* And I hope this I ſhall make plain and evident to you, That the **Grand Court of Parliament** was in ſubſtance the ſame that it was **before** the **coming in** of this **Conqueror**, and that there were **Engliſh Men** Members of it in the Time of the **Conqueror**.

'Tis not to be denied, but that the **ſame Courts**, that were in the **Saxon Time** for adminiſtration of Juſtice, continued after **William the firſt** was made King, and the Footſteps of them remain yet to this day: I ſhall mention a few, and ſo come to the main Point in Argument.

1. As

1. As it was their Wiſdom to preſerve the Ancient Land-marks; ſo was it likewiſe both their Wiſdom and their Care to continue their due Privileges and Intereſts. Their County Courts were ſtill kept up, and every County had its Court, and every Court its wonted Juriſdiction: no complaint muſt be to the King's Court, if Right might be done in the County; no Diſtreſs muſt be taken but by Warrant from the County, and that muſt be after complaint thrice made. The County Court muſt be called, as our Anceſtors have appointed: ſuch as will not come as they ought, ſhall be firſt ſummoned, and in caſe of default, diſtrained; at the fourth default, *Reddatur de rebus hujus hominis quod calumpniatum eſt, quod dicitur* Ceapgel, *& inſuper Regis forisfactura*; that is, The Complainant ſhall be ſatisfied out of the Diſtreſſes ſo taken, and the King alſo for his Fine. Theſe are the expreſs Laws of the Conqueror's own

1. *County Courts.* LL. Hen. 1. *c.* 6 apud Lambard *fol.* 180.

LL. Guil. *c.* 43 *fol.* 168.

LL. Guil. *c.* 64

eſtabliſhment. The *laſt* of which alſo was confirmed by another expreſs *Law*, ſaving that he would *allow* but of *two Summons* and *two Diſtreſſes* before *Execution*.

I ſhall give you a memorable caſe to prove the continuance of this Court.

Selden's *Titles of Honour*, 2d *Part* c. 5 f. 581 *u*. Eadmer. *Hiſ. Nov. l.* 1. p. 9 & videſis notas ad eundem. *p.* 197. de placito apud Pinendenem inter Lanfrancum Archiepiſcopum & Odonem Bajocenſem Epiſcopum.

Odo, the **Conqueror**'s half Brother, was by him made Earl of *Kent*, and therewith had the Gift of a large Territory in *Kent*, and taking advantage of the King's diſpleaſure at *Stigand*, the Arch-biſhop, of *Canterbury*, poſſeſſed himſelf by Diſſeiſin of divers Lands and Tenements belonging to that See. *Lanfrank*, the ſucceeding Arch-biſhop being informed hereof, petitioned to the King that **Juſtice** might be done him **ſecundum Legem Terræ**, and the King ſends forth a Writ to ſummon a *County Court*: The Debate laſted three days before the **Freemen** of the **County** of **Kent**, in the preſence of many *chief Men*, *Biſhops* and *Lords*, and others *skilful in the Laws*; and the **Judgment** paſſed for the

the Arch-biſhop *Lanfrank*, upon the Votes of the Freemen. This *County Court* was holden by *ſpecial Summons*, and not by *adjournment*, as was allowable by the Saxon Law upon ſpecial occaſions: And this Suit was originally begun, and had its final determination in the *County Court*. And the *County Courts*, in thoſe days, were of ſo great eſteem, that *two* of the *greateſt Peers* of the Realm, one a Norman, the other an Italian, did *caſt a Title* in fifteen Mannors, two Lordſhips, with many Liberties upon the Votes of the Engliſh-Freeholders in a *County Court*; and that the *Sentence* was *allowed* and *commended* by the *King*, and ſubmitted to by all. But,

2. The *Hundred Courts* were ſtill continued, and they were of *two ſorts*. The *firſt* whereof was holden *twice* a Year, and all the *Free-holders* within the *Hundred*, were bound to appear for the *ſervice* of their *Fees*; and was the *Sheriff's Court*, and ſuch *appearances* were called the *Sheriffs Turnes*, where it belonged

2. *Hundred Courts.*

to *Sheriffs* to enquire of all *Personal Offences*, and of all their *Circumstances* done within those *Hundreds*. The *other* was the more *ordinary Court*, belonging to the *Lord* of the *Hundred*, to whom also belonged the *Fines* in cases there concerned. This *Court* was to be held *once* in *each* Month; and no suit to be begun in the *King's Court*, that regularly ought to begin in the *Hundred*. No *Distringas* to issue forth till *three demands* made in the *Hundred*. And *three Distresses* then to issue forth; and if upon the *fourth* the Party *appear* not, *execution* then to be by *Sale* of the *Distress*, and the *Complainant* to receive *satisfaction*.

3. And so likewise were the *Court Barons*, &c. continued, and the *Lords* held *Pleas* either in their *own Persons*, or by their *Stewards*.

But not to forget, Sir, your Question, I shall now shew you what the **Soveraign Court of Parliament** was

was, and **whom** it **conſiſted** of in the **Saxon Times**; and for this I think it will be *needleſs* to give you any more than **one Inſtance** (which, as by the way, it does impregnably aſſert, That the **Commons of England** were an **Eſſential** and **Conſtituent Part** of the **Saxon General Councils**; ſo doth it, I think, *fully* and *clearly* refute and baffle that *novel Erroneous Notion*, *viz.* That there are **no Commons** to be found in the **Saxon great Councils**, nor any thing that tends towards the proof of the **Commons** of thoſe Times to have had **any ſhare** in making **Laws** in thoſe **Councils**.) The memorable Inſtance, is the **mighty Law** of **Tythes**, which was made and ordained,

The Anonimous Author, p. 20. *in the Margin.*

Idem. *p.* 13, 14.

A Rege, Baronibus, & Populo.

By the King, his Barons, and his People.

Lambard. de priſcis Angl. Legibus. *c.* 8. *fol.* 139. *Spelm.* Concil. Tom. 1. *f.* 621.

Now **William the Firſt**, in that little time of Reſt he had from Forreign Wars with the **French** King, and his *Neighbouring Princes* to **Normandy**, did apply both it and himſelf in

the ſetling of Laws here, which was done, not ex plenitudine Regiæ Poteſtatis; no, nor by the Norman Barons co-operating with that Power; but by the *joint Advice*, and *unanimous Conſent* of the *Grand Council* of the Lords and wiſe Men of the Kingdom of England: To prove which, I ſhall produce the Teſtimony of *Ancient Writers*, whom no Man of *Hiſtorical* underſtanding can modeſtly impeach of Partiality, Faction, or Intereſt, in the Caſe in Queſtion.

Lambard. *fol.* 158.

I. The firſt ſhall be taken out of the *Chronicle* of *Litchfield*, which tells us, That this William, in the fourth Year of his Reign at London, *Conſilio Baronum ſuorum*, by the Advice of his Barons, cauſed a General Meeting, or Aſſembly, to be ſummoned, *Per univerſos Angliæ Comitatus, omnes Nobiles, Sapientes, & ſuâ Legè eruditos, ut eorum Leges & conſuetudines audiret*; *i. e.* 'of all 'the Nobility, wiſe Men, and 'ſuch as were skilled in the Laws, 'through all the Counties of 'England, to hear what their Laws

Laws and Cuſtoms were. And after this was done, at the request of the English Community, he did *conſent* that they ſhould be confirmed; and ſo they were *ratified* and *kept* throughout all his Kingdom. The words are, *Ad preces Communitatis Anglorum, ex illo die Magna Authoritate veneratæ, & per univerſum Regnum corroboratæ & conſervatæ ſunt Leges Sancti Regis Edwardi, præ cæteris Regni Legibus.*

From this Teſtimony, I think it will plainly appear;

1. That the *Barones ſui* here of *William*, cannot absolutely exclude the English, and only ſignify his Norman Barons, upon thoſe Authorities and Reaſons, I have already offered, to prove, That there were equally *Barones* Francigeni & Angli noſtri, in his Time, (as you may ſee in my Argument under the third Queſtion.)

2. That the King having, by the Counſel of theſe his Barons, ſummoned all the Nobility, wiſe Men, and thoſe that were **skilled** in the **Laws** of the **Land**, throughout **all** the **Counties** of **England**, he then and there **ratified** and **confirmed** the **Laws** of **St. Edward.**

3. And to prove that this **general Aſſembly** of the **Nobility**, **wiſe Men**, and **able Lawyers**, were a PARLIAMENT, I ſhall now give you the Judgment of Mr. *Selden*, in his own words, which are theſe, *viz.* That,

Selden's Tit. of Hon. *f.* 580.

'William **the firſt**, in the *fourth* 'Year of his Reign, or MLXX. (which 'was the Year wherein he **firſt** brought 'the **Biſhops** and **Abbots** under the 'Tenure of **Barony**) *Conſilio Baro-* 'num ſuorum (ſaith *Hoveden* (*p*) out 'of a Collection of Laws, written by 'Glanvill) *Fecit ſummoniri per uni-* 'verſos Conſulatus Angliæ, **Anglos** *No-* 'biles, & Sapientes, & ſua Lege eru- 'ditos, ut eorum jura & Conſuetudines

(*p*) In Hen. 2. *p.* 343 E. Lond.

ab

'*ab ipſis audiret.* And twelve were re-
'turned out of every County, who
'ſhewed what the **Cuſtoms** of the
'Kingdom were, which being written
'by the hands of *Aldred* Arch-biſhop
'of *York*, and *Hugo*, Biſhop of *Lon-*
'*don*, were, with the *Aſſent* of the
'ſame *Barons*, for the moſt part, *con-*
'*firmed* in that Aſſembly, which was a
'**Parliament** of that Time.

And a little lower, he ſaith, 'This
'might be the ſame **Parliament**,
'wherein the Controverſy between
'*Thomas* Arch-biſhop of *York* (he
'was conſecrated after the death of
'*Aldred*, the ſame Year; and to the
'ſame Year this Controverſy is attri-
'buted) and *Ulſtan* Biſhop of *Worce-*
'*ſter*, touching certain Poſſeſſions, was
'determined.

So that from hence, 'tis eaſy to ob-
ſerve; That

1. There were **Engliſh Men** in this **Council**, by the words ANGLOS NOBILES, *&c.* And,

2. Beſides

2. That the King having, by the Counſel of theſe his Barons, ſummoned all the Nobility, wiſe Men, and thoſe that were **skilled** in the **Laws** of the **Land**, throughout **all** the **Counties** of **England**, he then and there **ratified** and **confirmed** the **Laws** of **St. Edward.**

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'ſame *Barons*, for the moſt part, *con-*
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'*Aldred*, the ſame Year; and to the
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'*ſter*, touching certain Poſſeſſions, was
'determined.

So that from hence, 'tis eaſy to ob-
ſerve; That

1. There were **Engliſh Men** in this **Council**, by the words ANGLOS NOBILES, *&c.* And,

2. Beſides

2. Beſides the Confirmation of the Laws of St. Edward here mentioned, it may reaſonably be ſuppoſed, That the Law for *bringing the Biſhops and Abbots under the Tenure of Barony*, was firſt made in this Parliament. And that

3. Likewiſe, the *great Caſe* between the Arch-biſhop of *York*, and this ſame Biſhop of *Worceſter*, was here judicially determined. And,

4. If there were no Engliſh Men in this great Council, how then came it to paſs that the Biſhop of York and London were there, who certainly were Biſhops in the Saxon Times? And it may alſo ſeem not improbable, that there was then an univerſal Conſent among them, that theſe two Biſhops ſhould be intruſted to write down for them the Engliſh Laws.

5. And there is *one great Thing* more, to cloſe withal, which is, That

That at **this Parliament**, when the **Saxon Laws** were confirmed, there was a **particular Law** paſt in **favour** of the **Normans**, *qui ante adventum Guilielmi Cives fuerant Anglicani*, that they ſhould be *participes Conſuetudinum Anglorum, quod ipſi dicunt* **Anhlote & Anſcote**, *& perſolvant ſecundum Legem Anglorum.*

Carta Regis Willielm. apud Lambard. *c.* 54. *fol.* 170.

The meaning of the words **Anhlote and Anſcote**, as Sir *Henry Spelman* informs us, is *vulgò* **Scot & Lot**; that is, That every ſuch **French Man** ſhould not be charged with **double Taxes** and **Duties** as a **Foreigner**, but that he ſhould pay his **eaſy** ſhare and proportion as any natural **Engliſh Man.** But then,

Sir H. Spelm. Gloſſ. verbo. Anhlote. *f.* 31.

II. It was in ſuch a **grand Aſſembly** of wiſe Men of the Kingdom, where *Lanfranc* was elected to the See of *Canterbury*; for it was by the **Aſſent** of the **Lords** and **Prelats**, and of the **whole People**; that is to ſay, by the **Parliament** of *England.* This likewiſe was about the *fourth* Year

Year of the Conqueror; And an Ancient *Hiſtorian* writes thus of his Election: *Eligentibus eum Senioribus ejuſdem Eccleſiæ cum Epiſcopis ac Principibus,* Clero & Populo *Angliæ, in Curia Regis in Aſumptione Sanctæ Mariæ.*

Gervaſ. Dorobernenſ. Act. Pont. Cant. *fol.* 1653. *l.* 5.

But another Contemporary Writer gives it you in theſe words;

Rex mittens propter illum in Normanniam, fecit eum venire in Angliam, eiq; Conſenſu & Auxilio *omnium* Baronum *ſuorum, omniumq;* Epiſcoporum & Abbatum, totiuſque Populi *Angliæ commiſit ei Dorobernenſem Eccleſiam.*

'Relat. Willielm. prim. ad finem tract. de Gavelkind à Sylâ Taylor. *p.* 194.

III. There was another General Council or Parliament held at Weſtminſter, in the *fourteenth* Year of this King, where, by his Charter, he confirmed the Liberties of that Church, after he had ſubſcribed his own Name, with the Sign of the Croſs; adding many of the great Clergy, and Temporal Nobility; and inſtead of *cum multis aliis*, ſays, *multis*

Ex Cartulario Cœnobii Weſtmonaſterienſis in Biblioth. *Cotton.* ſub effigie Fauſtinæ. A. 3. *Dugdal.* Orig. Juridic. *fol.* 16.

multis præterea illuſtriſſimis Virorum perſonis, & Regni Principibus diverſi ordinis omiſſis, qui ſimiliter huic confirmationi piiſſimo affectu Teſtes & Fautores fuerunt. Hii autem illo Tempore à Regia po-

Provincia, *i.e.* Comitatus. *Seld.* Tit. Hon. *fol.* 273. *Spelm.* Gloſſ. 1it. Provincia. *f.* 471.

teſtate **diverſis Provinciis & Urbibus,** *ad* **Univerſalem Synodum** *pro cauſis cujuſlibet Chriſtianæ Eccleſiæ audiendis & tractandis, ad præſcriptam* **Celeberrimam Synodum** *quod Weſtimonaſterium dicitur, Convocati,* &c. In the Margin of the Book, there is writ this Remarque, *Nota hic hos omnes convocari à Rege ſuâ auctoritate ad cauſas Religionis tractandas, tàm Nobiles de Clero, quàm Principes Regni, cum aliis inferioris gradus, Convocatio quorum videtur eſſe Parliamentum.*

Parliamentum, Synodus magna nuncupatur. Somneri Gloſſ.

IV. I think, by the *general direction* of the **Writs** of this King, as alſo by that of his **Charters,** (ſome of which I have given you in my *Argument* to your *third* Queſtion, and therefore ſhall refer you back to them) it is plainly demonſtrable, that **William** had

as well English *Barons* as French Barons; and that his Barons were always a part of his great Council, will hardly, I ſuppoſe, be denied by any. And that *one Law* of his, which may be called the First MAGNA CHARTA in the Norman Times, by which the King reſerved to himſelf from the Free Men of this Kingdom, nothing but their free Services due to him according to Law; in the concluſion ſaith, That *they*, to wit, the English, ſhall *hold* and enjoy their Eſtates well, and in peace, free from all unjuſt Exactions and Tallage; and this *ratified* and *confirmed* by the Common Council of the *whole Kingdom*, which cannot be reſtrained to the Norman Barons only. So that herein is aſſerted the Liberty of the Engliſh Free-men, and of the Repreſentative Body of the Kingdom.

LL. Guillelm. c. 55.

Theſe, I think, are uncontrovertible Proofs and Evidences.

1. That

1. That there were *General Councils*, or *Parliaments*, in this first William's Time.

2. That in these *Parliaments*, the English Barons as well as the French Barons were present.

3. And lastly, That there likewise was, as an essential part thereof,

1. The *Communitas Anglorum*, the Community of English-men.

2. Besides the Bishops and Nobility, there were the Clerus & Populus, the Inferior Clergy and People of England. And,

3. Not only the Great Clergy, and the Temporal Nobility, but the *Principes diversi Ordinis, a Regiâ potestate diversis Provinciis & Urbibus ad Universalem Synodum Convocati*, &c. *viz.* The Chief and Principal Men of several Ranks and Degrees in Condition, were summoned by *virtue* of the *King's Writ*, out of their several re-

respective Counties, Cities, and Burroughs, to this General Synod, or Parliament.

And, Sir, if this be so, I doubt not but that both your self, and all judicious and unbiassed Persons, (who have not resolved to espouse a Party, and who will not suffer themselves to be drawn aside by any novel unwarrantable Opinions, but will fairly submit their Judgments to clear and perspicuous Truth, when once it manifestly appears) I say, both you and they will certainly rest satisfied in these great and powerful Authorities, which I have here presented to publick view, and serious consideration: and I think these have sufficiently made out and proved, That

1. William the first, vulgarly called the Conqueror, did not get the Imperial Crown of England by the Sword, nor made an absolute Conquest of the Nation at his first entrance.

2. Nor that he abolished all the English Laws, or changed the whole

whole Frame and Conſtitution of the Saxon Government. But,

3. That the Engliſh had ſtill Eſtates and Fortunes continued to them; and that it was a great miſtake in any to affirm, That the King and his Normans divided and ſhared them all among them. As likewiſe,

4. In the fourth place, It has been a grand Error to aſcertain, That there were no Engliſh Men in the Common Council of the whole Kingdom, in the Reign of William the Conqueror.

Now, Sir, as a corroborating Teſtimony, to explain and enforce what I already have ſaid, I ſhall conclude my Diſcourſe at preſent with a very *memorable* and *ſtudied Speech* of a Perſon of great Learning and Abilities in his Time, collected out of a large *Original Manuſcript* (which I have ſeen) of Sir *Roger Owen*, a very *great Antiquary*, that lived in the Time of *King James*; and one, who, as appears by that Book, was a Man not

only of wonderful Knowledg, and admirable Obſervation in the Records and Hiſtories of his own Nation, but alſo in thoſe of Foreign Countries.

This was a Speech of the *then* Lord *Whitlock*, in *Novemb.* 1650. upon the *Houſe's* long and ſmart Debate touching the *Act for putting all the Books of* Law, *and the Proceſs and Proceedings in Courts of Juſtice into the* English Tongue: In which *Debate* ſome ſpake in *derogation* and *diſhonour* of the Laws of England.

For ſome vindication whereof, and for ſatisfying ſome Miſtakes, he delivered his Opinion in the Houſe to this effect.

It is now *newly printed*, in Mr. *Whitlock's* MEMORIALS OF THE ENGLISH AFFAIRS, *&c.* and is here truly tranſcribed.

Mr.

Mr. Speaker;

'THe Queſtion upon which your 'preſent Debate ariſeth, is of no 'ſmall moment, nor is it eaſily or ſpee-'dily to be determined; for it com-'prehends no leſs than a *total Alteration* 'of the *Frame* and *Courſe* of *Proceed-'ings* of our *Law*, which have been 'eſtabliſhed and continued for ſo ma-'ny Years.

'I ſhould not have troubled you 'with any of my weak Diſcourſe, but 'that I apprehend ſome Miſtakes and 'diſhonour to the Law of England, if 'paſſed by without any Anſwer, may 'be of ill conſequence; and having 'attended to hear them anſwered by 'others, who are not pleaſed to do 'it;

'I held my ſelf the more engaged, 'in the *duty* of my *Profeſſion*, to offer 'to your Judgment (to which I ſhall 'always ſubmit) what I have met 'with, and do ſuppoſe not to be im-'pertinent, for the rectifying of ſome 'Miſtakes which are amongſt us.

'A worthy Gentleman was pleaſed 'to affirm, with much confidence, (as 'he brought it in upon this Debate) 'That the **Laws** of **England** were in-'troduced by **William the Conqueror**, 'as (among other Arguments, he af-'ſerted) might appear by their being 'written in the **French Tongue.**

'In his firſt Aſſertion, that our 'Laws were introduced by William 'the Conqueror out of France, I ſhall 'acknowledg, that he hath ſeveral 'both Forreign and Domeſtick Au-'thors, whom he may follow therein; 'The *Forreign* Authors are, *Jovius*, 'Æmilius, *Bodine*, *Hottoman*, *Dyno-'thus*, *Volateran*, *Berault*, *Berkley*, 'Choppinus, *Uſpargenſis*, *Malines*, and 'Polidore, who affirm this erroneous 'piece of Doctrine; but the leſs to 'be regarded from them, becauſe they 'were ſtrangers to our Laws, and 'took up upon *truſt* what they *pub-'liſhed* in this Point.

'Of our own Country-men, they 'have *Paris*, *Malmesbury*, *Matthew* 'Weſtminſter, *Fox*, *Coſins*, *Twyne*, 'Heyward, *Milles*, *Fulbeck*, *Cowell*,

'*Ridley*,

'*Ridley*, *Brown*, *Speed*, *Martyn*, and 'ſome others.

'All of them affirm, That the **Laws** 'of **England** were **introduced** by **Wil**'**liam the Conqueror**: But their Er'rors are refuted by Sir *Roger Owen* in 'his *Manuſcript*; who ſaith, That *Ro*'*ger Wendover*, and *Matthew Paris*, 'were the *firſt Monks* that *hatched* theſe 'addle Eggs.

'I ſhall endeavour to ſhew you, 'That the *Original* of our **Laws** is '**not** from the **French**; that they were '**not introduced** by **William the Con**'**queror** out of **Normandy**: And I 'ſhall humbly offer to you my *Anſwer* 'to ſome of their *Arguments*, who are 'of a contrary opinion.

'*Polydore*, Hiſt. Angl. *l.* 9. affirm'eth, That **William the Conqueror** 'firſt appointed **Sheriffs** and **Juſtices** 'of the **Peace**, erected *Tenures*, 'brought in **Trials** by **twelve** Men, 'and ſeveral other *Particulars* of our '*Laws*.

'For **Sheriffs**, their name *Scire* '*Reeve*, ſhews them to be of the **Sax**'**on** Inſtitution. And our Hiſtories 'mention the *diviſion* of *Shires* by

'King *Alphred*; but in truth, it was 'much more ancient.

'And it is apparent by our *Books* 'and *Records*, ſome whereof are in 'the Huſtings of London, and in the 'Tower, that the ſame things were 'in uſe here long before the Time of 'King Will. 1.

'Sir *Roger Owen* ſhews at large, 'That Livery of Seiſin, Licenſes, or 'Fines for Alienation, Daughters to 'inherit, Trials by Juries, Abjura-'tions, Utlaries, Coroners, diſpoſing 'of Lands by Will, Eſcheats, Gaols, 'Writs, Wrecks, Warranties, Catalla 'Fellonum, and many other parts of 'our Law, and the Forms of our 'Parliaments themſelves, were here 'in being before the Time of Duke 'William.

'Agreeing hereunto are many of 'our *Hiſtorians*, and learned *Anti-'quaries*.

'But it is objected, That in the 'Grand Cuſtumary of Normandy, 'the Laws are almoſt all the ſame 'with ours of England, and the form of 'their Parliaments the ſame with 'ours.

'That

'That the *Writer* of the *Preface* to 'that *Book*, ſaith, It contains only the 'Laws and Cuſtoms which were 'made by the Princes of Normandy, by the *Councel* of their *Prelats*, *Earls*, *Barons*, and other *Wiſe Men*; which ſhews the forms of 'their Parliaments to be the ſame 'with ours, and the Laws in that '*Book* to be the proper Laws of 'Normandy, and ours to be the ſame; 'therefore they argue, that our Laws 'were introduced from thence by 'William the Conqueror.

'This will be fully anſwered, if 'that Grand Cuſtumary of Normandy was compoſed in our King Edw. I. 'his Time, (as good Authors hold it 'was) then it cannot be, That our 'Laws or Parliaments could be derived from thence.

'Theſe Learned Men ſay, That this 'Cuſtumary was a *meer Tranſlation* of 'our Law-Book, *Glanvill*; as the 'Book of Regia Majeſtas of the 'Laws of Scotland is; and the like 'of the Laws of Burgundy.

'They farther add, That the first 'eſtabliſhing of the **Cuſtumary** of 'Normandy, was in **Hen.** 1. his Time; 'and afterwards again, about the *be-* 'ginning of **Edw.** 2. his Time.

'If the **Laws** in the **Cuſtumary** 'were **introduced** there from **England**, 'it will then be granted, that the **Laws** 'of **England** were **not introduced** here 'by **William the Conqueror**: But I 'think it very clear, that their **Laws** 'were brought to them out of **Eng-** 'land; and then you will all agree to 'the concluſion.

'Our King **Hen.** 1. conquered **Nor-** 'mandy from his Brother **Robert**, and 'was a *Learned* King, as his Name 'Beauclerke teſtifies; whom *Ivo* calls, 'an eſpecial Eſtabliſher of Juſtice. *Se-* 'querius relates, That this King eſta- 'bliſhed the Engliſh Laws in Nor- 'mandy.

'Herewith do agree *Gulielmus Bri-* 'to, *Armoricus*, *Rutclurius*, and other 'French Writers; who mention alſo, 'That the **Laws** in the **Cuſtumary** of 'Normandy, are the ſame with the 'Laws collected by our Engliſh King 'Edward the Confeſſor, who was be- 'fore the Conqueror.

An

'An additional Teſtimony hereof, 'is out of *William de Alenſo Revile*, 'who, in his *Comment* upon the Cu-'ſtumary, ſaith, That all the Laws of 'Normandy came from the Engliſh 'Laws and Nation.

'In the Cuſtumary, there is a Chap-'ter of Nampes, or Diſtreſſes, and 'decreed, That one ſhould not bring 'his *Action* upon any *Seiſure*; but 'from the Time of the Coronation of 'King Richard; and this muſt be our 'King Richard the firſt, becauſe no 'King of *France* was in that Time of 'that Name; and the words Nampes 'and Withernams, were Saxon 'words, taken out of the Engliſh 'Laws, ſignifying a *Pawn*, or *Diſtreſs*, 'and in the ſame ſence are uſed in the 'Cuſtumary.

'That which puts it further out of 'ſcruple, is, That there are yet ex-'tant the *Manuſcripts* themſelves of 'the Saxon Laws, made in the Par-'liamentary Councils held by them 'here; which are in the Language 'and Character of thoſe Times; and 'contain in them many of thoſe things 'which are in the Norman Cuſtumary.

'It

'They farther add, That the first 'eſtabliſhing of the **Cuſtumary** of 'Normandy, was in **Hen.** 1. his Time; 'and afterwards again, about the *be-'ginning* of **Edw.** 2. his Time.

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'It

'It is no improbable Opinion, That 'there was a former Establishment of 'our Laws in Normandy, before the 'Time of Hen. 1. and that it was by 'Edward the Confessor, who (as all '*Writers* of our *History* agree) was a 'great Collector and Compiler of our 'English Laws.

'He *lived* a long time with his Kins-'man Duke William in Normandy, 'who was *willing* to please the Con-'fessor, in hopes to be appointed by 'him to be his Successor; wherein 'the *Duke*'s Expectation did *not fail* 'him.

'The Confessor having no Chil-'dren, and finding Normandy with-'out a *setled Government*, and want-'ing *Laws*, advised with his Kinsman, 'Duke William, to receive from him 'the Laws of England, which he had 'collected, and to *establish* them in 'Normandy; which Duke William 'and his Lords readily accepted, for 'the *good* of their *People*; and there-'by obliged the Confessor.

'Another proof hereof is, That 'such Laws as the Normans had be-'fore the Time of Duke William,

'were

'were *different* from those in the Cu-
'stomary, and from the English
'Laws.

'As their *Law*, That the *Husband*
'should be *hanged* if his *Wife* were
'a *Thief*, and he did *not discover* it;
'The meaner People were as Slaves,
'and the like: and the *Trial* of *Theft*
'by *Ordeil*, which then was *not* in
'England.

'*Wigornienſis* reports, That the Nor-
'mans who came in with Queen Em-
'ma, the Wife of Ethelred, were ſo
'hated of the English, for their *injuſ-*
'*tice* and *falſe Judgment*, that in the
'Time of King *Canutus*, they were,
'for this cauſe, *baniſhed*; and it is the
'*leſs* probable, that they being ſo un-
'juſt themſelves, ſhould introduce ſo
'juſt Laws as ours are.

'Between the Conqueſt of Nor-
'mandy by Rollo, and the *Invaſion* of
'England by Duke William, there
'were not above 160 Years; that of
'Normandy was about *Anno* 912. that
'of England *Anno* 1060.

'It is not then *conſonant* to *Reaſon*,
'that thoſe Normans, *Pagans*, a
'rough *Martial* People, *deſcended*
'from

'from ſo many *Barbarous Nations*, 'ſhould, in the time of 150 Years, 'eſtabliſh ſuch **excellent Laws** among 'themſelves, and ſo **different** from 'the **French Laws**, among whom 'they were, and all parts in the World 'except **England**.

'And **ſuch Laws** which were not 'only fit for their *Dukedom* and *ſmall* 'Territory, but fit alſo for **this King-** 'dom, which in thoſe days was the 'ſecond in **Europe** for **Antiquity** and 'Worth, by *confeſſion* of **moſt** *Forreign* 'Hiſtorians.

'If we will give *credit* to their *own* 'Authors, this Point will be ſufficient- 'ly evinced by them. Theſe words 'are in the **Poem** of the **Cuſtumary**, 'which is entituled **Deſcriptio Nor-** 'mannïæ.

'*Hucuſque Normannicæ CONSUE-* 'TUDINES LATOREM *ſive Da-* 'torem SANCTUM EDWARDUM 'Angliæ *Regem*, &c.

'The ſame is witneſſed by *Chronica* 'Chronicorum, That **St. Edward**, King 'of **England**, gave the **Laws** to the 'Normans, when he was long har- 'boured there.

'And

'And that he made both the **Laws** 'of **England** and **Normandy**, appears 'ſufficiently by the conformity of 'them, for which he cites ſeveral Par-'ticulars, as of **Appeals**, and the 'Cuſtom of **England**, *ad probandum 'aliquid per credentiam duodecim ho-'minum vicinorum*, which, he ſaith, re-'mained in **Normandy** to that day.

'*Polydore* forgetting himſelf what 'he wrote in another place, ſaith, of 'King **Henry the Seventh**, that when 'a Doubt was made upon the Propoſal 'of *Marriage* of his *Daughter* to 'Scotland, that thereby **England** 'might in time be ſubject unto **Scot-'land.**

'The King anſwered, **No**; and 'that **England**, as the Greater, will 'draw it to **Scotland** being the leſs, 'and **incorporate** it to the **Laws** of 'England, as (ſaith the *Hiſtorian*) 'it did **Normandy**, though the **owner** 'thereof was **Conqueror** of Eng-'land.

'And Sir *Roger Owen*, in his *Manu-'ſcript*, affirms, That there is **not any** 'of our *Hiſtorians*, that lived in the 'ſpace of 200 Years, immediately af-

'ter

'ter the Conqueſt, which doth de-
'ſcribe our Laws to be taken away,
'and the Norman *Cuſtom* introduced
'by the Conqueror.

'Some of them (and not improba-
'bly) mention the alteration of ſome
'part of them, and the bringing in
'ſome Norman *Cuſtoms*, effectual for
'the *keeping* of the *Peace*.

'There is yet behind the *great Ar-*
'*gument* moſt inſiſted on, and often
'urged by the Gentlemen of another
'Opinion, which is the Title of
'William, who is called the Con-
'queror; from whence they conclude,
'That by his Conqueſt he changed the
'Laws and Government of this Na-
'tion, and that his Succeſſors reckon
'the beginning of their Reigns from
'his Conqueſt.

'To this is anſwered, That *a poſſe*
'*ad eſſe non valet Argumentum*: the
'Conquering of the Land is one
'thing, the introducing of new Laws
'is another thing; but there is direct
'proof to the contrary of this Argu-
'ment.

Dukr

'Duke William *never* Sir-named 'himſelf the Conqueror, nor was ſo 'called in his life-time, as may appear by 'all the Letters Pattents and Deeds 'that he made, wherein he is called '*Guilielmus Rex, Dux*, &c. never Con-'queſtor; and our *Ancient Hiſtorians* 'give him the ſame Titles, and not 'that of Conqueror.

'In the Title of *Nubrigenſis's* Book, 'he is Sirnamed *William the Baſtard.* '*Malmsbury* calls him *William the* '*Firſt*; *Hoveden*, *William the El-*'*der.*

'*Adam de Monmoth* ſaith, That '1. *Ed.* 3. this word (Conqueſt) was 'found out to denote and diſtinguiſh 'the certain Edward; becauſe two 'of the ſame name were Predeceſſors 'to this King, and to the Conqueror, 'who claimed the Crown as Heir to 'Edward the Confeſſor, but (ſaith he) 'we call him the Conqueror, for that 'he *overcame* Harold.

Duke William himſelf claimed to 'be King of England as Succeſſor, 'and Adopted Heir of the Confeſſor, 'by his Will, and Harold's renounce-'ing of his Title by Oath.

The

'The Regiſter of St. *Albans*, *Matth. Paris*, and others, atteſt, That the 'Barons of England did homage to 'him as Succeſſor; and he relied on 'them in his Forreign Wars, and the 'Check given to him by the Kentiſh 'Men, and the Forces gathered by the 'Abbot of St. *Albans*, brought him to 'engage to confirm the Laws of the 'Confeſſor; and as his Succeſſor by 'legal Right, they admitted him to 'be their King.

'*Volaterus* writes, That he was made 'Heir to the Confeſſor, and was *Uncle* to him.

'Another affirms, That Edward by 'his Will left England to him.

'*Paulus Æmilius*, and *Fulgaſius*, 'are to the ſame purpoſe.

'Pope *Alexander* the 11*th*, ſent him 'a Banner, as Witneſs, that with a 'ſafe Conſcience he might expel Ha'rold the *Tyrant*, becauſe the Crown 'was due to him by the Confeſſor's 'Will, and by Harold's Oath.

Agree-

'Agreeable hereunto are *Gemiticenſis*, *Walſingham*, *Malmesbury*, *Huntington*, *Ingulphus*, *Paris*, *Pike*, *Wendover*, *Gaxton*, *Gisburn*, and others.

'The Antient Deeds of the Abby 'of *Weſtminſter* (which were ſome-'time in my Cuſtody) do prove 'this.

'King **William**, in his **Charter** to 'them, ſets forth his **own Title** to the 'Crown, thus, *Beneficio Conceſſionis & 'Cognati mei glorioſi Regis Edwardi.*

'In his ſecond **Charter**, dated *An-'no* 15. of his Reign, he ſaith, in ho-'nour of **King Edward**, who **made** 'me his **Heir**, and **adopted** me to Rule 'over this Nation.

'In his **Charter**, dated 1088. of the '**Liberties** of **St. Martins the 'Great**, in the *Mannſcript* thereof, are 'theſe words;

'In Example of *Moſes* who built 'the *Tabernable*, and of *Solomon* who 'built the *Temple*,

'*Ego Guilielmus Dei diſpoſitione, & 'conſanguinitatis Hæreditate Anglorum 'Baſileus*, &c.

'The **Charter** of **Hen.** 1. his Son, 'to this Abby, in honour of **Edward** 'my Kinſman, who **adopted** my **Father** 'and his **Children** to be **Heirs** to this 'Kingdom, *&c.*

'In another **Charter** of *Hen.* 1. in 'the Book of *Ely*, he calls himſelf the 'Son of King **William the Great**, 'who by **Hereditary Right** ſucceeded 'King Edward.

'It is true, as to his pretence of Ti- 'tle by the **Will** of the **Confeſſor**, '*Mathew Paris* objecteth, That the 'Deviſe was void, being without the 'conſent of the *Barons*.

'To which may be anſwered, That 'probably the **Law** might be ſo in '*Hen.* 3. Time, when *Paris* wrote, and 'was ſo taken to be in the *Statute* of '*Carliſle*, and in the Caſe of King *John*.

'But at the time of Duke **William's** 'Invaſion, the **Law** was taken to be, 'That a **Kingdom** might be **transfer-** 'red by **Will**.

So

'So was that of *Sixtus Rufus*, and '*Asia* came to the *Romans* by the 'Will of King *Attalus*; the words by '*Annæus Florus* are, *Populus Romanus* '*Bonorum meorum* HÆRES *esto.*

'*Bithinia* came to the *Romans* by 'the last Will of their King *Nicome-*'*des*, which is remembred by *Utropius*, 'together with that of *Libia.*

'*Cicero* in his Oration tells us, That 'the Kingdom of *Alexandria*, by the 'last Will of their King, was devolved 'to *Rome.*

'And *Prasutagus Rex Icenorum* in 'England, upon his Death-bed, gave 'his Kingdom to the Emperor *Nero.*

'As to Examples in this Point at 'Home, This King William the first, 'by his Will, gave England to his 'younger Son William Rufus.

'King Stephen claimed by the Will 'of Henry the first.

'King Henry the eight had Power, 'by Act of Parliament, to order the 'Succession of the Crown as he plea-'ſed, by Will.

'And the Lords of the Council, in 'Queen Mary's Time, wrote to her, 'That the Lady Jane's Title to the 'Crown, was by the Will and Letters 'of Edward the ſixth.

'As the caſe of Hen. 8. was by 'Act of Parliament; ſo Duke Wil-'liam, after he had conquered Ha-'rold, was, by the general conſent of 'the Barons and People of England 'accepted for their King; and ſo his 'Title by Will confirmed.

'And he both claimed, and govern-'ed the Kingdom, as an Heir and 'Succeſſor, confirmed their Antient 'Laws, and ruled according to them: 'This appears by *Chronica Chronico-'rum*, ſpeaking of William the Ba-'ſtard, King of England, and Duke 'of Normandy, he ſaith, That where-'as, as St. Edward had no Heir of 'England, William having conquered 'Harold, the *Uſurper* obtained the

'Crown

'Crown under **this Condition**, That 'he ſhould **inviolably** obſerve thoſe 'Laws given by the ſaid **Edward**.

'It is teſtified likewiſe, by many of 'our *Hiſtorians*, That the **Ancient** 'Laws of **England** were **confirmed** by 'Duke **William**.

'*Jornalenſis* ſaith, That out of the '*Merchen-Lage*, *Weſt-Saxon-Lage*, and '*Dane-Lage*, the **Confeſſor** compoſed 'the **Common-Law**, which remains 'to this day.

'*Malmesbury*, who lived in Duke 'William's Time, ſaith, That the 'Kings were **ſworn** to obſerve the 'Laws of the **Confeſſor**, ſo called, '(ſaith he) becauſe he **obſerved** them 'moſt **religiouſly**.

'But to make this Point clear out 'of *Ingulphus*, he ſaith, in the end of 'his *Chronicle*, "I *Ingulphus* brought "with me from *London*, into my Mo-"naſtery, (*Crowland*) the Laws of "the moſt Righteous King *Edward*; "which my Lord King *William* did

" command, by his Proclamation, to " be Authentick and Perpetual, and to " be obſerved throughout the whole " Kingdom of *England*, upon pain of " moſt heinous puniſhment.

' The *Lieger-Book* of the Abby of ' *Waltham*, commends Duke **William** ' for **reſtoring** the **Laws** of the **Eng-** ' **liſh-men** out of the **Cuſtoms** of their ' Country.

' *Radburn* follows this Opinion, and ' theſe **Laws** of **Edward the Confeſ-** ' **ſor**, are the ſame in part which are ' continued in our GREAT CHAR- ' TER of LIBERTIES.

' A Manuſcript entituled, *De Geſtis* ' *Anglorum*, ſaith, That at a **Parlia-** ' **ment** at **London**, 4. *W.* 1. the Law- ' yers alſo preſent, that the King might ' hear their Laws, he **eſtabliſhed Saint** ' **Edward's Laws**, they being **former-** ' **ly** uſed in King **Edgar's** Time.

' There is alſo mention of the *twelve* ' Men out of every County, to deliver ' truly the Eſtate of their **Laws** : The ' ſame is remembred by *Selden's* Hiſtory of

'of Tythes, and Titles of Honour, and 'in a *Manuſcript Chronicle* bound with 'the Book of *Ely* in *Cotton*'s Library.

'One of the worthy Gentlemen, 'from whom I differ in Opinion, was 'pleaſed to ſay, That if **William the 'Conqueror** did not **introduce** the '**Laws** of **Normandy** into **England**, 'yet he conceives **our Laws** to be '*brought* out of **France** hither, in the 'time of ſome *other* of our *Kings*, '' who had large Territories in **France**, 'and brought in **their Laws** hither; elſe 'he wonders how **our Laws** ſhould 'be in **French**.

'Sir, I ſhall endeavour to ſatisfy his 'Wonder therein by and by; but, 'firſt, with your leave, I ſhall offer to 'you ſome *Probabilities* out of the '*Hiſtory*, That the **Laws** of **England** 'were by ſome of thoſe Kings *carried* 'into **France**, rather than the **Laws** of '**France** *brought* hither.

'This is expreſly affirmed by *Paulus 'Jovius*, who writes, That when the 'English Kings reigned in a *great part*

'of France, they *taught* the French 'their Laws.

'*Sabellicus*, a *Venetian* Hiſtorian, 'writes, That the Normans, in their 'Manners, and Cuſtoms, and Laws, 'followed the Engliſh.

'*Polydore Virgil*, contradicting him-'ſelf in another place than before ci-'ted, relates, That in our King Hen. 6. 'Time, the Duke of *Bedford* called to-'gether the *Chief Men* of all the *Ci-'ties* in Normandy, and delivered in 'his Oration to them, the many Be-'nefits that the Engliſh afforded them, 'eſpecially in that the Engliſh gave to 'them their Cuſtoms and Laws.

'By the Chronicle of *Eltham*, H. 5. 'ſent to *Cane* in Normandy, not only 'Divines, but Engliſh Common Law-'yers, by the agreement at *Troys*.

'So there is much more probability 'that the Laws of England were 'introduced into France and Nor-'mandy, than that the Laws of Nor-'mandy, or any other part of France, were

'were introduced into England.

'If the Normans had been Conquerors of England, as they were not; but their *Duke* was only a 'Conqueror of Harold, and received 'as Hereditary King of England; yet 'is it not probable they would have 'changed our Laws, and have introduced theirs; because they did not 'use to do so upon other Conquests.

'The Normans *conquered* the Isles 'of *Guernsey* and *Jersey*, yet altered 'not their Laws, which in their local 'Customs are like unto ours.

'The like they did in *Sicily*, *Naples*, and *Apulia*, where they were 'Conquerors; yet the Ancient Laws 'of those Countries were continued.

'I hope, Mr. Speaker, I have, by 'this time given some satisfaction to 'the Worthy Gentlemen who differed 'from me, that the *Laws* of England 'were not imposed upon us by the 'Conqueror, nor brought over hither, either out of Normandy, or 'any *other part* of France, but are our 'Ancient Native Laws.

I

I must now come to indeavour also
'to satisfy the Wonder; If they were
'*not brought* out of Normandy, or
'some *other part* of France, how come
'they then to be written in the French
'Language!

'Sir, It is to me an Argument, That
'because they are written in French,
'therefore they were not brought in
'by Duke William the Norman; for
'the French Tongue was not the Lan-
'guage of Duke William, and the
'Normans.

'They had not been then (in Duke
'William's Time, past four *descents* in
'that part of France; and it is impro-
'bable, that they, in so short a Time,
'should lose their *Native Tongue*, and
'take up, and use the Language of
'another Countrey, which was con-
'quered by them.

'The Normans came from *Sweden*,
'*Gothland*, *Norway*, and *Denmark*;
'between whose Languages, and with
'the *High-Dutch*, their Neighbours,
'there is a great affinity; but between
'these Languages, and the French,
'there is none at all. *Ul-*

'*Ulphilus* holds, that the *Dutch* 'Tongue came from the *Goths*. *Jor-*'*nandus* ſaith, The *Goth's* Tongue 'came from the *Dutch*. All agree, 'That between thoſe Languages and 'the French there is no affinity.

'It is ſo improbable, that Duke 'William ſhould cauſe our Laws to 'be in French, that when he pro-'claimed them, (as *Ingulphus* teſtifies) 'he commanded that they ſhould be 'uſed in the ſame Language they were 'written (in Engliſh) to his Juſtices, 'and gives the Reaſon, Leſt by Igno-'norance we ſhould happen to break 'them.

'But it hath been further objected, 'If Duke William did not cauſe our 'Laws to be written in French, what 'then ſhould be the Reaſon, that the 'Grand Cuſtumary of his Norman 'Laws were written in the French 'Tongue?

'The Reaſon thereof is given, That 'the Normans, being a Rough and 'Martial People, had few Clerks amongſt

'amongſt them, but made uſe of thoſe 'French, amongſt whom they then 'lived, and whoſe Language they 'then began to be acquainted with, 'and to underſtand.

'But when they were in England, 'they had not ſo much uſe of thoſe 'Clerks, and that Language, but more 'of the English.

'And probably it might be, that 'the Confeſſor had been ſo long in 'France, that he was more Maſter of 'that Language than the Normans, 'and that the Normans underſtood 'that Language better than the Eng-'liſh, and thereupon the Cuſtumary 'was written in the French Tongue.

'But it doth not therefore follow 'that Duke William muſt cauſe the 'Engliſh Laws to be written in the 'French Tongue: but it is more like-'ly, that he might cauſe them to be 'continued in their *Native Idiom*, 'which was much *nearer* in affinity to 'his own *Northern* Language than the 'French was.

That

'That the **French** Tongue was **not** 'introduced, as to our **Laws** and 'other things, by Duke **William** into 'England, appears, in that the **French** 'was in great uſe with us here, both 'before, and ſome-time after his Inva-'ſion.

'*Beda* affirms, That in *Anno* 640, 'it was the **Cuſtom** of **England** to 'ſend their *Daughters* into the *Mona-'ſteries* of **France**, to be brought up 'there; and that *Ethelbert*, *Ethelwulf*, '*Ethelred*, and other **Saxon** Kings, 'married into the *Royal Blood* of '**France**.

'*Gabor* notes, That before the Time 'of Duke **William**, the **Normans** and 'English did ſo link together, that 'they were a Terror to *Forreign* Na-'tions.

'*Ingulphus* ſaith, That the **Saxon** 'Hand was uſed until the Time of 'King **Alfred**, long **before** the Time 'of Duke **William**; and that he be-'ing brought up by **French** Teachers, 'uſed the **French** Hand.

And

'And he notes many Charters of 'Edward and Edgar, written in the 'French Hand, and ſome Saxon mixt 'with it, as in the Book of Doomes-'day.

'That Edward the Confeſſor, by 'reaſon of his long being in France, 'was turned into the French Faſhion, 'and all England with him.

'But that William the firſt com-'manded our Laws to be written in 'the Engliſh Tongue, becauſe moſt 'Men underſtood it, and that there 'be many of his Patents in the Sax-'on Tongue.

'I ſuppoſe we may be ſatisfied, 'that William the firſt did not cauſe 'our Laws to be written in French, 'though the French Language was 'much in uſe here before his Time.

'And if he did not introduce the 'French Language into England, the 'Argument falls, That becauſe they 'are written in French, therefore 'he brought them in.

But,

'But, Sir, I shall offer you some 'Conjectures, how it came that our 'Laws were written in French, which 'I suppose might be begun in the Time 'of our K. Hen. 2. who was a French-'man born, and had large Territories 'and Relations in France, and with 'French-men, of whom great Num-'bers came into England; and they 'and the English matched, and lived 'together, both here, and in some 'parts of France.

'Hence it came to pass, (as *Giral-'dus Cambrensis* notes) that the Eng-'lish Tongue was in great use in Bur-'deaux, and in other parts of France, 'where the English-men were resident 'and conversant; the like was, when 'the French-men were so conversant 'in England.

'*Mathew Westminster* writes, That 'he was in hazard of losing his Liv-'ing, because he understood not the 'French Tongue: and that in King 'Hen. 2. and King *Stephen*'s Time, 'who had large Dominions in 'France; their Native Country, and the

'the Number of **French**, and of 'Matches with them, was ſo great, 'that one could hardly know who was 'French, and who **Engliſh**.

'*Gervaſius Tilsberienſis* obſerves the 'ſame: And *Brackland* writes, That in 'Rich. 1. Time, preaching in **England**, 'was in the **French** Tongue. Probably 'Pleading might be ſo likewiſe; and 'in King **John**'s Time, **French** was ac-'counted as the *Mother* Tongue.

'There are ſcarce any Deeds of our 'Kings in **French** before **Hen.** 2. his 'Time, the moſt are in **Ed.** 1. and 'Ed. 2. their Time.

'That **our Laws** were **pleaded** and 'written in **French** before Edw. 3. his 'Time, appears by the *Stat.* 36. Edw. '3. *c.* 15. which recites the **Miſchief** 'of the **Law** being in **French**; and 'enacts, That the **Law** ſhall **thereafter** 'be **pleaded** in **Engliſh**, and *enrolled* in 'Latin.

'This is one ground of the miſtaken 'Opinion of *Lambard*, *Polydore*, '*Speed*, and others, That Duke **Wil-**'liam brought in hither both the **Nor-**'man **Laws** and Language; which I

ap-

'apprehend to be fully anſwered, and 'the contrary manifeſted by what I 'have ſaid before on this Subject.

'*Polydore's* Miſtake may appear the 'more, when he aſſerts, that by the '*Stat.* 36. Edw. 3. Matters are to be 'enrolled in **Engliſh**, which is con-'trary to the expreſs Words, that they 'are to be enrolled in **Latin**.

'Many of our **Law-Books** were 'written in **Latin** before the **Norman** 'Invaſion, as appears by the *Ancient* 'Rolls of *Mannors*, and *Court Barons*, 'and our Old Authors, *Glanvill*, *Bra-'cton*, *Tilsbury*, *Hengham*, *Fleta*, the 'Regiſter, and the Book of *Entries*.

'The Records at *Weſtminſter* and 'the *Tower*, and other Records yet 'extant, are in *Latin*; and many Books 'of our *Law* in *Latin*, were tranſla-'ted into **Engliſh**, about **Edw.** 3. his 'Time.

'Moſt of our Statutes, from **Edw.** 1. 'his Time, till about the middle of 'Hen. 7. his Reign, are enrolled in

'French, notwithſtanding this *Stat.* '36. Edw. 3. except the *Stat.* 6. R. 2. '& ſome others in Latin.

'R. 2. H. 4. H. 5. and H. 6. uſed to 'write their Letters in French; and 'ſome of our Pleadings are in 'French, and in the *Common Pleas* to 'our Time.

'But, Sir, our Law is, *Lex non* '*Scripta*, I mean our Common Law, 'and our Statutes, Records, and 'Books, which are written in French, 'are no *Argument* that therefore the 'Original of our Laws is from France: 'but they were in being before any of 'the French Language was in our 'Laws.

'*Forteſcue* writes, That the Engliſh 'kept their Accounts in French, yet 'doubtleſs they had Accounts here, 'and Revenues before the French Lan-'guage was in uſe here.

'My Lord *Cook* ſaith, That the 'Conqueror taught the Engliſh the 'Norman Terms of *Hawking*, *Hunt-*

ing,

'*ing*, and *Gaming*, &c. yet no doubt 'but that these Recreations were in 'use with us before his Time.

'And tho' Duke **William** or any 'other of our Kings before, or after 'his Time, did bring in the **French** 'Tongue amongst us, yet that is **no** '*Argument*, that he or they did **change**, 'or **introduce** our **Laws**, which un-'doubtedly were here **long before** 'those Times; and some of them, 'when the **French** Tongue was so 'much in use here, were **translated**, 'written, and **pleaded**, and **recorded**, 'in the **French** Tongue, yet remained 'the **same** Law still.

'And from the great use of the '**French** Tongue here, it was, That 'the **Reporters** of our **Law-Cases** 'and Judgments, which were in those 'Times, did write their Reports in '**French**, which was the pure **French** 'in that Time, tho' mixt with some 'words of Art.

'Those **Terms** of **Art** were taken, 'many of them, from the **Saxon**

'Tongue, and may be ſeen by them 'yet uſed; and the **Reporters** of later 'Times, and our **Students** at this 'day uſe to take their **Notes** in 'French, following the **Old Reports** 'which they had ſtudied, and the **Old** 'French, which, as in other Langua-'ges, by time came to be varied.

'I ſhall not deny, but that ſome '*Monks* in elder Times, and ſome '*Clerks* and *Officers* might have a Cun-'ning, for their private Honour and 'Profit, to keep up a **Myſtery**, to 'have as much as they could of our 'Laws, to be in a kind of **Myſtery** 'to the **Vulgar**, to be the leſs under-'ſtood by them: But the **Councellors** 'at **Law**, and **Judges**, can have no 'advantage by it; but perhaps it 'would be found, that the **Law**, be-'ing in **Engliſh**, and generally more 'underſtood, yet not ſufficiently, would 'occaſion the more Suits.

'And poſſibly there might be ſome-'thing of the like nature as to the 'Court Hand; yet if the more **Com-'mon Hands** were uſed in our Law-writings,

'writings, they would be the more 'subject to change; as the English, 'and other Languages are, but not 'the Latin.

'Surely the French Tongue used in 'our Reports and Law-Books, de-'serves not to be so enviously decried, 'as it is by *Polydore*, *Aliot*, *Daniel*, '*Hottoman*, *Cowell*, and other Censu-'rers.

'But, *Mr. Speaker*, if I have been 'tedious, I humbly ask your pardon, 'and have the more hopes to obtain 'it from so many worthy English Gen-'tlemen, when that which I have 'said, was chiefly in vindication of 'their own Native Laws, unto which 'I hold my self the *more obliged* by the '*Duty* of my *Profession*; and I ac-'count it an honour to me to be a 'Lawyer.

'As to the Debate, and Matter of 'the Act now before you, I have deli-'vered no Opinion against it, nor do 'I think it reasonable, that the gene-'rality of the People of England

'ſhould, by an Implicit Faith, depend 'upon the knowledg of others, in 'that which concerns them moſt of 'all.

'It was the *Romiſh* Policy, to keep 'them in *Ignorance* of Matters pertain-'ing to their *Souls* Health; let them 'not be in Ignorance of Matters per-'taining to their *Bodies*, *Eſtates*, and 'all their *worldly* Comfort.

'It is not unreaſonable, that the 'Law ſhould be in the Language 'which may beſt be underſtood by 'thoſe, whoſe Lives and Fortunes are 'ſubject to it, and are to be governed 'by it.

'*Moſes* read all the Laws openly 'before the *People* in their *Mother* 'Tongue: God directed him to write 'it, and to expound it to the *People* 'in their own *Native* Language, that 'what concerned their *Lives*, *Liber-'ties*, and *Eſtates*, might be made 'known unto them in their moſt *perſpi-'cuous* way.

The

'The Laws of the Eastern Nations 'were in their *proper* Tongue.

'The Laws at Constantinople were 'in Greek; at Rome in Latin; in 'France, *Spain*, *Germany*, *Sweden*, '*Denmark*, and other Nations, their 'Laws are published in their *Native* '*Idiom*.

'For your own Country, there is 'no Man that can read the Saxon 'Character, but may find the Laws of 'their Ancestors yet extant in the Eng-'lish Tongue.

'Duke William himself com-'manded the Laws to be proclaimed 'in English, that none might pretend '*ignorance* of them.

'It was the Judgment of the Par-'liament, 36. Edw. 3. That Plead-'ings should be in English; and in 'the Reigns of those Kings, when 'our Statutes were enrolled in 'French and English; yet then the 'Sheriffs, in their several Coun-

'ties, were to proclaim them in 'English.

'I ſhall conclude with a Complaint 'of what I have met with abroad, 'from ſome *Military* Perſons; no-'thing but *Scoffs* and *Invectives* againſt 'our Law, and Threats to take it 'away; *but the* Law *is above the reach* '*of thoſe Weapons, which at one time or* '*another will return upon thoſe that uſe* '*them.*

'Solid Arguments, ſtrong Reaſons 'and Authorities, are more fit for 'Confutation of any Error, and Satiſ-'faction of different Judgments: 'When the *Emperor* took a Biſhop in '*compleat Armour* in a *Battle*, he ſent 'the *Armour* to the *Pope*, with 'theſe words, *Hæccine ſunt veſtes Filii* '*tui?*

'So may I ſay to thoſe *Gentlemen* 'abroad, as to their *Railings*, *Taunts*, 'and *Threats* againſt the *Law*, *Hæccine* '*ſunt Argumenta horum Antinomiano-*'*rum?* They will be found of no 'force, but *recoiling Arms.*

Nor

'*Nor is it ingenious or prudent for* 'ENGLISH-MEN *to deprave* 'their *Birth-right, the Laws of their* 'own *Country.*

Thus, Sir, have I impartially given you my Sentiments of **William the first** his **Conquest**, which hath been ſo *terribly* and *frightfully* repreſented and **publiſhed** to the **World**, by the *Ignorance*, *Intereſt*, and *Artifice* of ſome **Modern Writers**: Thus have I, as an **Engliſh Man**, endeavoured to do my **Country** Juſtice, and to **ſupport** the **true Honour**, both of our worthy **Saxon** Anceſtors, and of our **excellent** and famous **Laws** againſt **Conqueſt** and **Slavery**; as alſo to juſtify the **Ancient Parliamentary** Right as well of **Lords** as **Commons**.

But yet for your *fuller* and *clearer* ſatisfaction in this ſo weighty a Point, I ſhall refer you, if you pleaſe, to the *Learned* and *Judicious Diſcourſes* writ, in ſome meaſure, more particularly upon

upon this Subject, *never* yet ſufficiently *anſwered* to my *Conviction*, though I have *induſtriouſly* compared and conſidered all the *pretended Anſwers* and them together, (without the leaſt of *byaſs* or *prepoſſeſſion*; and I heartily could wiſh others would do the like, and that for TRUTH's ſake.)

The Diſcourſes are theſe, *viz.*

Mr. *Selden's Jani Anglorum Facies Altera.*

Mr. *Sylas Taylor's* Hiſtory of *Gavelkind.*

Mr. *Petyt's* Rights of the *Commons* of *England* aſſerted.

And Mr. *Attwood's*, *Jani Anglorum Facies Nova.*

And his,

—*Jus Anglorum ab Antiquo.*

You would likewiſe, I ſuppoſe, be extreamly pleaſed in the peruſal of another Learned and Modeſt Book, written

written by an *Anonymous* Anthor, entituled,

Patriarcha non Monarcha.

Authors, for whoſe Names Poſterity will have a greater reſpect than we at preſent have; and that for their diſcovery of Truth, and refuting ſo many Vulgar Errors.

I am, SIR,

Your moſt Faithful

Servant, *&c.*

FINIS.

The Appendix.

Abbas de Middleton tenet in Capite de Domino Rege Manerium de Middleton, &c. ex Feoffamenti Regis Æthelſtani & nullum ſervitium fecit niſi Orationes.

In Rotulo de Inquiſitionibus Dominicorum Dorſetſhire. An°. 4to. R. H. Fil. R. I.

Here we ſee that King *Æthelſtan*, who reigned above 740 Years agoe, *infeoffed* the Abbey of *Middleton*, of the *Mannor* of *Middleton*; and that by virtue thereof, the *Abbot* held it *in Capite*, 4. *H.* 3. and did *no Service* for it, but only to *pray* for the *Souls* of *him*, and other *ſucceeding Kings*; and all this, you ſee, found by *Inquiſition*, in the Fourth Year of *Hen.* 3.

Rot. Cartar. 19. *H.* 6. *Nu.* 16. *m.* 27. *per Inſpex.*

Pro Decano & Capitulo Sancti Martini Magni London. per Inſpeximus.

Inſpeximus Cartam, quam celebris Memoriæ Dominus Willielmus quondam Rex Angl. progenitor' noſtri, fecit Deo & Eccleſiæ Sancti Martini Magni London. in hec verba.

Quia inter multa bona opera, quæ fideles Chriſti pro animar' ſuar' ſalute operantur, hoc precipuũ eſtimatur & tenetur, Quod inſtitutiõ & edificatiõ Sanctæ Matris Eccle devota mente impendi-

tur in qua suorum Dei supplicationibus peccata a pio Deo diluuntur, quod Moises in mystici Tabernaculi constructione ꝑmonstravit, quod etiam Salomonis industria ꝑfiguravit, dum Templum Dño Artificiosum & honorabile edificaret, futuram significans Eccleam summo a fidelibus debere honore decorari, quoꝝ vidit exemplo in nomine Dñi nri Iesu Christi, Ego Willus Dei dispositione & *consanguinitatis hæreditate* Anglorum Basileus Normannoꝝq; Dux, & Rector cujusdam fidelis mei Ingelrici scilicet *petitioni* acquiescens *Archiepiscoporum, Episcoporum, Abbatum, Comitum & Universorum* procerum *meorum, Sacro Consilio parens omnes possessiones terrarum, quas tempore venerabilis ac dilectissimi cognati & predecessoris mei Regis Edwardi.* Idem Ingelricus acquisierat ꝙ ipsius insignissimi Regis Animæ Salute, necnon & peccatorum meorum Remissione, concedo & Regia auctoritate imppm corroboro & confirmo Deo & Eccle Beati Martini, quam *infra muros London.* sitam ꝑfatus Ingelricus & Erardus Frat ejus de propriis suis Redditibus in delictoꝝ suoꝝ Remedium honorabiliter ad Dei laudem, & Canonicalem Regulam imppm servand & tenend construxerunt. Sunt igitur hæc terrarum nomina, *&c.*

Et si quas alias libtates vel consuetudines, aliqua Eccleaꝝ Regni mei Angl meliores het; si quis vero hoc in aliud quam concessimus transferre ꝑsumpserit, cum Juda Proditore Dei hæredibas luat penas. Scripta est hæc Chartula An ab Incarnatione Dñi M. LX. VIII. scilicet secundo Anno Regni mei; pacta vero est hæc Donatio die Natali Dñi, & postmodum in die Pentecost confirmat, quando Matil conjux mea in Basilica Sancti Petri Westm in Reginam divino nutu est consecrata, *&c.*

Ego Willus Rex Anglorum & Dux Normannorum sub Sigillo Sancte, + quas indeclinabiliter consensi atq; vol oravi. Ego Matil Regina consensum prebui. Ego Ricus

cus Regis Fil annui. Ego Srigandus Archiepiſcopus ſubſcripſi. Ego Aldredus Archiepiſcopus confirmavi. Ego Wiltus Lond Epiſcopus, infra cujus muros pfatum Monaſterium ſitum eſt, ſignaculo Sancte Crucis ſubarravi, & libtatem omnimodam quantumcumq; mee ptinet poſſibilitati, conceſſi. Ego Odo Baiocenſis Epiſcopus conceſſi. Ego Hugo Luxonienſis Epiſcopus interfui. Ego Goiffridus Epiſcopus corroboravi. Ego Hermannus Epiſcopus conceſſi. Ego Leouricus Epiſcopus conceſſi. Ego Giſo Epiſcopus conceſſi. Ego Edwinus Abbas. Ego Wolwaldus Abbas. Ego Baldwinus Abbas. Ego Agelſinus Abbas. Ego Turſtinus Abbas. Ego Brand Abbas. Ego Alſwinus Abbas. Ego Sithricus Abbas. Ego Wills Fil Osbti Comes. Ego Robtus Frat Regis Comes. Ego Edwinus Comes. Ego Robtus Comes. Ego Marchere Comes. Ego Waldeof Comes. Ego Rogerus de Monte Goverii Comes. Ego Ricus Fil Giſlebti Princeps. Ego Wills Malet Princeps. Ego Arfaſtus Regis Cancellarius. Ego Michael Regis Capellanus. Ego Giſlbtus Capellanus. Ego Osbinus Capellanus. Ego Wills Capellanus. Ego Thomas Capellanus. Ego Bernardus Capellanus. Ego Walterus Capellanus. Ego Robtus Capellanus. Ego Johes Sancte Romane Ecclie Cardinalis Presbit per Gallias & Angl concedente Papa Alexandro vices Apoſtolicas gerens, huic conſtitutioni interfui, & quantum Apoſtolice Sedi ptinuit libtatem Ecclie pſenti Signo confirmavi. Ego Petrus Sancte Romane Ecclie ſimilit Cardinalis Presbit & Cancellarius, ab eodem Papa in Angl elegatus, huic Conſtitutioni acquieſcens propria Manu ſubſcripſi.

I give you this *Charter*, Sir, as a *further Proof* and *Evidence* for me, in theſe *Particulars*, viz.

1. You may obſerve by theſe words, *Conſanguinitatis hæreditate Anglorum Baſileus*, that here King *William* made an *abſolute diſclaimer* of *Conqueſt*, in the ſecond Year of his *Reign*, and only inſiſted on, (what he knew full well was his *ſurer hold*,) his *claim* by *Hereditary Right*.

2. And this is ſo much the *more conſiderable*, as it was done in his *Great Council* of Arch-biſhops, Biſhops, Abbots, Earls, *& Univerſorum* procerum *ſuorum*, a word of a *large ſignification*, as well in *Hiſtorians* as in *Ancient Records*, for under the word *Proceres* were comprehended *Principes Civium, vel Civitatis*; And the *former Inſtances* I have given you of other *General Councils*, and the *Parts* thereof in this King's Reign, *fully agree* with *this Interpretation*.

Rot. Parl. 2. *H.* 5. Pars ſecunda *N.* 10.

3. The Claim and Proteſtation of the Commons made the Parl. 2*d H.* 5. which ſays, *That ſo as hit hath* ever *be their* Liberte *and* Freedom, *that thar ſhould no* Statute, *ne* Law, *be made of laſſe then they* yaffe *thereto their* aſſent, *conſidering that the* Commune *of your Lond, the which that* is, *and* ever *hath be a* Membre *of your* Parliament, *been as well* Aſſentirs *as* Petitioners. And which was *ratified* and *confirmed* by the *King* and *Lords*, and ſo became an *Act* of *Parliament*, was, but an *Affirmation* and *Declaration* of the *Ancient Law* of the *Land*: And the *ſame Right* cannot be *denied* by any Man to the *Lords*.

4. And that he *confirmed* (as the *Cuſtom* of *ſucceeding Kings* have done to *this day*) all the *Poſſeſſions* of thoſe Lands to the *Church* of *St. Martins le Grand*, which they had in the Time of *EDWARD* the CONFESSOR.

Now if this *fond Notion* of *William*'s *Abſolute Conqueſt* be true,

true, then either the Arch-biſhops, Biſhops, Abbots, Priors, Earls, Barons, and Commons, in *Parl.* 15. *R.* 2. *knew* it, or they did *not*. That they were *ignorant* of it, is not *eaſily* to be *preſumed*, becauſe they *lived* within *ten* of *three hundred* Years ago, and no doubt but there were ſome *Learned* Men among them, that knew the *ancient Conſtitutions* of the *Nation*: And if they *did*, then were they *guilty* of the *greateſt madneſs* and *folly* that ever was, when the *Commons* prayed that *King*; *En* plein *Parlement que noſtre Seigneur le Roy ſoit & eſtoiſe auſi frank en ſa* Regalie Liberte & Dignite Royale *en* ſon temps *come* aſcuns de ceſt Noble Progenitors, Roys d' Engl *furent en* lour temps *nient contreſteant aſcun Eſtatut ou Ordinance fait devant ceſt hures a contraire & meſment en* derogation *de la* Libertee & Franchiſe *de la* Corone *qu'il ſoit* adnulle & *de* nul force & *puis touz les Prelates & Seigneures Temporels prierent en meſme le manere & ſur ce noſtre Seigneur ledit Roy* mercia *les dits Seigneurs & Communes de la grant tendreſſe &* affection *qu'ils avoient a la* Salvation *de ſon* Honeur & *de ſon* Eſtate & *a cauſe que lour dit* priers & requeſtes *luy ſemblerent* honeſtes & reſonables *il* ſagrea & aſſenta pleinement *a ycelles*. *Rot. Parl.* 15. *R.* 2. *N.* 13.

Now can any Man, of but an *ordinary underſtanding*, think, That the *Parliament* intended, by this *Act*, to *oust* themſelves of all their *Ancient* and *Legal Rights*, and *totally* to give up their *Eſtates* and *Fortunes* to the King's *abſolute Diſpoſition?* Is it *poſſible almoſt* to be *ſuppoſed*, that they *deſigned* to *confound* and *overthrow* the *whole Polity and Government of the Kingdom*, and *reduce* all to the *Arbitrary Will* and *Power* of a *New Conqueror*, without a *Conqueſt*? What Man is there (that is not become *ſervile* to *Common Opinion*, and *implicit Suppoſitions*) of ſo *Inventive* a Faculty, as to conjecture ſuch grand Abſurdities? And

yet

yet theſe, and many more, are the direct Conſequences of thoſe that endeavour to maintain and juſtify theſe pernicious Principles.

For the *Petition* and *Law* is, that *Rich.* 2. ſhould be as *free* in his *Regality*, *Liberty*, and *Dignity* Royal, as *any* of his *Noble Progenitors* Kings of *England*; then it *naturally* follows, That he was to be as *Free* and *Abſolute* as *William* the *Conqueror*: And then what is the Concluſion and Reſult, But that the *Engliſh* were *neither* to have *Eſtates* nor *Fortunes* left them: and therefore it could be no great Matter to them, by *what Law*, *Right*, or *Property*, Men *held* their *Eſtates*; And ſo *farewel* to *Parliaments*.

The Anonymus Author againſt Mr. Petyt, *p.* 43.

But we know, and are well aſſured, That *never* any *ſuch Imagination* entred into the *Minds* of the *Lords* and *Commons*, in 15. *R.* 2. not only by the Laws made then in that Parliament, but by thoſe in the next Parliament, held the next Year after.

Raſ. Stat. 15 *R.* 2. *f.* 161.

Id. 16. *R.* 2. *fo.* 163.

The Commons granted to the King, That *(pur la grant Affiance, Affection, and Aſſurance)* for the great Truſt, Affection, and Aſſurance they had in the Noble Perſon of the King, in his moſt excellent Knowledg, and his moſt ſage Diſcretion; and alſo for the great tenderneſs they had for his Crown and the Kingdom *(& les droits dicels)* and the Rights thereof, *(s'accorderant & aſſenterent)* they agreed and aſſented, in *full Parliament*, That the *King*, by *good deliberation*, and *Aſſent* of the *Lords* of his *Wiſe Council*, might take the whole Matter, touching the *Statute* of *Proviſors*, to him; and that he ſhould have *full Power* and *Authority* to *modify* the ſaid *Statute* againſt the *Pope* and *Court* of *Rome*; and to *Ordain*,

Rot. Parl. 16 *R.* 2. *N.* 8.

dain, by the *Deliberation* and *Aſſent* aforeſaid, in ſuch manner as he ſhould think beſt, to the *Honour* of *God*, and of *Holy Church*, and the *Salvation* of the *Rights* of his *Crown*, and of the *Eſtate* and *Profit* of this *Realm*, and to put the ſame in execution when done.

And that (*au proſchein Parlement*) at the next Parliament, all the Matter aforeſaid ſhould be fully ſhewn (*as ditz Communes*) to the ſaid Commons; and the Reaſon thereof is memorable, *viz.* (*au fin quils purront alors par bon aviſement agreer, ſi Dieu pleſt, a ycelles*;) That the *Commons* then might, upon *good advice*, agree thereto, if it ſhould ſo pleaſe God.

From all which it evidently appears;

1. That *no Law* could be made in *Richard* the *Second*'s Time, or in *any* of his *Progenitors*, Kings of *England*, (which cannot but take in *William* the *Firſt*) without the *Aſſent* of the *Lords* and *Commons* in *Parliament*.

2. That *none* of thoſe *Kings* could *abrogate* or *make void* ſuch *Laws*, when *made*, without the *like aſſent*.

3. That though the *General Phraſe*, *viz.* That King *Richard* ſhould *be* and *ſtand* as *free* in his *Regality*, *Liberty*, and *Dignity Royal* in *his* Time, as *any* of his *Progenitors* were in *Theirs*; and that the *King* ſays, That the *Deſires* and *Requeſts* of the *Commons*, ſeemed *honeſt* and *reaſonable* to him, and therefore he gave his *Royal Aſſent* to *that Law*: Yet *neither* the *King*, nor the *Lords*, could ever believe, that it was *honeſt* and *reaſonable*; or that it was *any part* of the *Liberty* and *Dignity* of the *Crown*, to *change* the *whole Frame* and *Conſtitution* of the *Engliſh Government*, by *altering* and *making Laws* at *Will*; by *taking away* the *Subjects Poſſeſſions*, and beſtowing them upon whomſoever he pleaſed; by deſtroying the *ancient Courſe* and *Power* of *Parliaments*; and, in a word, by *turning* all things *topſy turvy*.

And

And thus we have the *Evidence* and *Proof* of the *greatest Authority* that can be *given*, againſt the *Abſurdity*, as well as *falſeneſs*, of King *William*'s *Abſolute Conqueſt*, *viz.* a *Law* and *Statute* of the *Kingdom*.

To conclude all, I ſhall make bold to borrow the words of that great Aſſertor of the Proteſtant Cauſe, againſt the Intollerable Uſurpations of Papal Power, the ſo eminently Learned and Pious *Thomas* now Lord Biſhop of *Lincoln*, in his *Treatiſe* of *Popery*, *or the Principles and Poſitions approved by the Church of* Rome, *&c.* in *Quarto*, *pag.* 116. and ſay, If *any Man* can *truly* and *impartially* (*as to the ſum and ſubſtance of the Teſtimonies here cited*, *for I neither need*, *nor will undertake for every particular Circumſtance*, *or Typographical Error*) *either ſhew*,

1. *That I have miſquoted the Authors and Books I cite*; *and that ſuch Paſſages do not occur in the places quoted.*
2. *Or* (*if they do occur*) *that I have miſtook their meaning*, *as to the Purpoſes for which they are produced.*

I ſay, If *any Man* can, and will *ingeniouſly* ſhew me either of theſe, I ſhall be ſo far from *not confeſſing* my *Fault*, or declaring how I was *miſled* into it; that I ſhall have a *hearty value* for any ſuch *friendly admonition*, and receive it with all the *grateful acknowledgment* as becomes me: For my *only deſign* is, the *Detection* of *Error*, and *Eſtabliſhment* of *Truth* to *future Generations*, and not to have the *World impoſed upon* by the *Tricks*, *Impoſtures*, and *Artifices*, which *too many* have been *guilty of*, either to *promote* their own *particular* Gain and *Intereſt*, (to which *ſuch* care not *what* they *Sacrifice*) or, upon a far *worſe*, and more *grievous Conſideration*, to bring the *whole Nation* into *dividing Parties* and *Factions*; and thus by *Embroyls* and *Entanglements*, to *throw* them at laſt into *fatal Convulſions*, to the *deſtruction* both of *Prince* and *People*.

FINIS.